Department for Levelling Up,
Housing & Communities

Duncan Parr
Rapleys
33 Jermyn Street
London
SW1Y 6DN

Our ref: APP/A2280/W/20/3259868
Your ref: MC/19/1566

3 November 2021

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY A C GOATHAM & SON
LAND OFF PUMP LANE, RAINHAM, KENT
APPLICATION REF: MC/19/1566

1. I am directed by the Secretary of State to say that consideration has been given to the report of Mrs JA Vyse DipTP DipPBM MRTPI, who held a public local inquiry on 15-18 and 22-23 February, 1-3 and 5 March, 19-23 and 28 April 2021 into your client's appeal against the decision of Medway Council to refuse your client's application for planning permission for redevelopment of land off Pump Lane to include residential development comprising up to 1,250 residential units, a local centre (with final uses to be determined at a later stage) a village green, a two form entry primary school, a 60 bed extra care facility, an 80 bed care home and associated access (vehicular, pedestrian, cycle), in accordance with application No MC/19/1566, dated 3 June 2019.

2. On 17 November 2020, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with her recommendation. He has decided to dismiss the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental

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Impact Assessment) Regulations 2017. Having taken account of the Inspector's comments at IR1.9-1.10, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Matters arising since the close of the inquiry

6. On 20 July 2021 a revised National Planning Policy Framework (the Framework) came into force. However, as the changes do not affect the main issues in this inquiry, the Secretary of State does not consider that the revised Framework raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.

7. On 15, 22 and 29 October 2021, you, on behalf of your client, shared additional information with the Secretary of State in relation to the emerging Local Plan timetable, which they viewed as relevant to his decision. The Secretary of State has given consideration to this additional information, though does not consider that it represents a material change in circumstances such that a referral back to parties would be necessary. The information is included at Annex A of this decision letter. Copies of all representations received may be obtained on request to the email address at the foot of the first page of this letter.

Procedural matters

8. An application for a partial award of costs was made by Medway Council against the Appellant (IR1.1). This application is the subject of a separate decision letter.

Policy and statutory considerations

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

10. In this case the development plan consists of saved policies of the Medway Local Plan (2003). The Secretary of State considers that relevant development plan policies include those set out at IR4.2-IR4.29. He notes that the Local Plan is of a considerable age, and agrees with the Inspector's assessment at IR12.226-12.237 about the extent to which development plan policies are in accordance with the Framework. He has taken this assessment into account when reaching his conclusions on this case.

11. Other material considerations which the Secretary of State has taken into account in addition to the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), include the relevant documents and guidance set out at IR4.32-IR4.35. For clarity, the Framework references within this letter have been amended from those in the IR to reflect the revised Framework paragraph numbering where necessary.

12. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

13. The emerging plan comprises a new Local Plan covering the period to 2037. The Secretary of State notes that at the time of the Inquiry, the emerging plan was proposed to cover the period to 2035.

14. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State notes that preparation of the new Local Plan is still at an early stage. He notes that as of September 2021 Regulation 18 consultation on the new Local Plan has been undertaken but Regulation 19 consultation has not yet been undertaken. Consequently, a full draft plan has not yet been published, meaning there has not yet been an opportunity to consult on draft policies.

15. For the reasons given at IR4.36, the Secretary of State agrees with the Inspector with regard to the emerging new Local Plan that in light of its early stage, no weight is afforded to it.

Main issues

16. For the reasons given at IR12.2, IR12.196 and at paragraph 1.1 of IR Appendix E, the Secretary of State agrees that the main issues are those set out by the Inspector at IR12.2.

Character and appearance of the surrounding area

17. The Secretary of State agrees with the Inspector at IR12.3 that the appeal site is located outside any settlement boundary as shown of the Local Plan Proposals Map and lies within open countryside for planning policy purposes. He also notes that the site also forms a significant part of the Gillingham Riverside Area of Local Landscape Importance (ALLI) as defined by Local Plan policy BNE34 (IR12.4), is a valued landscape in Framework terms (IR12.5) and that it is a matter of agreement between the parties that the development proposed would give rise to adverse landscape and visual effects (IR12.6).

18. The Secretary of State agrees with the Inspector's analysis of landscape context at IR12.7-IR12.19, of visual context at IR12.20-IR12.21, of landscape effects at IR12.22-IR12.36, of visual effects at IR12.37-IR12.53, and of the Gillingham Riverside ALLI at IR12.54-IR12.68.

19. For the reasons given there, the Secretary of State agrees with the Inspector that overall, the appeal scheme would have a substantial adverse landscape and visual impact, with corresponding harm to the character and appearance of a wide swathe of countryside between Lower Rainham Road and Twydall/Rainham. Like the Inspector, he considers that the degree of harm would be significant and has come to this view having had regard to the status of the site, lying as it does within a valued landscape as recognised by its designation as an ALLI in the Local Plan and the harm that would be a consequence not only to its landscape importance, but also to its functions, particularly that as a green buffer (all at IR12.69).

20. The Secretary of State agrees that those conclusions bring the development into conflict with policy S1, policy BNE25, policy BN34, policy BNE47 and paragraphs 174a) and b) of

the Framework (IR12.70). The Secretary of State considers that this harm attracts substantial weight against the proposal.

Heritage assets

21. The Secretary of State agrees with the Inspector's analysis of heritage impacts at IR12.72-IR12.133 and IR12.217-12.220. For the reasons given there, the Secretary of State agrees with the Inspector's assessment of harms at IR12.131 that there would be no harm to the heritage significance of York farmhouse, or the listed outbuildings within the Bloors Place complex. He further agrees with the Inspector's conclusion at IR12.131 that the harm to Pump farmhouse, Bloors Place, the listed walls and Lower Twydall Conservation Area would be at the lower end of the less than substantial range, with the harm to Chapel House and Lower Rainham Conservation Area in the middle of the spectrum. He further agrees that there is very limited/minor harm to the non-designated asset that is the Oasts.

22. For the reasons given at IR12.127-IR12.130, the Secretary of State agrees that the historic landscape does not here merit treating as a non-designated heritage asset (IR12.132). He further agrees with the approach taken by the Inspector in IR12.219.

23. The Secretary of State agrees with the Inspector at IR12.219 that the heritage harms should be given considerable importance and weight. He further agrees with the Inspector that would be conflict with policies BNE14 and BNE18 (IR12.133). He agrees that Paragraph 202 of the Framework requires such harms to be weighed against the public benefits of the scheme and Paragraph 203 of the Framework requires to harm to the non-designated asset to be taken into account (IR133). This balancing exercise is undertaken below at paragraph 49.

Agricultural land

24. The Secretary of State notes that around 96% of land at the appeal site is classified as either Grade 1 (excellent quality) or Grade 2 (very good quality), with the remainder comprising Grade 3a (good to moderate quality) (IR12.135) and that there are no current development plan policies relating to agricultural land and so national policy and guidance form the principal consideration (IR12.136).

25. For the reasons given at IR12.137-IR12.154 the Secretary of State agrees with the Inspector that on the evidence before him, there is a good prospect for the land to be farmed in such a way that it realises a reasonable profit (IR12.153).

26. The Secretary of State has considered the Inspector's analysis at IR12.222-IR12.225 and IR12.235 regarding the extent of BMV land in the District and the availability of non-BMV land in the District. While he notes that there is no requirement in the Framework for a formal agricultural land balance to be carried out, for the reasons given, he agrees that there is at least the possibility of locating strategic development, such as that proposed here, on land that whilst comprising BMV is potentially of poorer quality/usefulness than that of the appeal site, albeit that that may be some years off if it was to be delivered as part of that emerging Plan (IR12.223).

27. Overall, the Secretary of State agrees that the loss of this significant area of BMV land, and the orchards, would have a negative effect on the provision of such land in terms of economic and other benefits, bringing it into conflict with paragraph 174b) of the

Framework (IR12.224). He further agrees with the Inspector that this harm attracts moderate weight (IR12.235).

Highways

28. For the reasons given at IR12.155-12.160, the Secretary of State agrees with the approach taken by the Inspector, namely that it is appropriate to focus on the areas of greatest potential traffic impact in order to assess the scheme against the relevant policies (IR12.158). The Secretary of State agrees with the Inspector at IR12.161 that the local highway network, including key arterial routes, is already heavily congested, particularly during the AM and PM peaks. He notes that the Appellant has proposed a number of mitigation works, identified at IR12.161, as amended during the Inquiry, to which he has given consideration.

29. The Secretary of State notes that there were two competing appraisals before the Inquiry that deal with traffic impacts (IR12.162) and that the results of each assessment are significantly different (IR12.165). For the reasons given at IR12.162-IR12.172 and IR191, the Secretary of State agrees with the Inspector at IR12.191 that in terms of the highway modelling evidence, on balance, the outputs of the Council's more holistic Medway Aimsum Model (MAM) approach (which models the interaction between junctions, links and journey times) are to be preferred over the Appellant's isolated junction modelling approach.

30. For the reasons given at IR12.173-IR12.178 and at IR12.192 the Secretary of State agrees with the Inspector that the residual cumulative impacts on subnetwork 2 would be severe, particularly during the AM and PM peaks (IR12.192). Like the Inspector, the Secretary of State recognises that those impacts are largely confined to peak hours and that the subnetwork forms only a part of the wider network. However, the Secretary of State also agrees with the Inspector that that does not mean that the impacts cannot be considered as severe in their context (all at IR12.192).

31. Overall on highway matters, the Secretary of State agrees with the Inspector that the appeal scheme would have a severe residual cumulative impact on the local highway network and that there would be conflict in this regard with Local Plan policy T1 and paragraphs 110 and 111 of the Framework (IR12.192). The Secretary of State considers this harm attracts substantial weight against the appeal scheme.

32. For the reasons given at IR12.189, he agrees with the Inspector's finding of no harm in terms of highway safety (IR12.190). He further agrees with the Inspector's conclusions at IR12.93.

Benefits

33. The Secretary of State notes that the housing land supply range identified by the parties is between 1.78-3.03 year, and that whichever figure is used, the parties are agreed that as a minimum, the shortfall is significant. The Secretary of State considers that the weight to be afforded to the delivery of housing in the light of the housing land supply shortfall is substantial (all IR12.201). Similarly, the Secretary of State agrees at IR12.202 that for the reasons given there is an acute need for affordable housing and in light of

that, the delivery of at least 25% of the residential units as affordable accommodation attracts substantial weight.

34. The Secretary of State agrees with the Inspector at IR12.203 that the development would contribute to employment provision and that future residents would also contribute to the economy through local expenditure. For the reasons given at IR12.203, the Secretary of State agrees that the weight to be given to employment provision is substantial.

35. For the reasons given at IR12.204, the Secretary of State agrees that the development would result in significant improvements in terms of ecology and biodiversity. Like the Inspector, he considers that the benefits secured in this regard attract substantial weight.

36. For the reasons given at IR12.205-IR12.206 the Secretary of State agrees with the Inspector at IR12.206 that signalisation of the section of restricted carriageway beneath the railway at the southern end of Pump Lane is a benefit which attracts only limited weight in favour.

37. For the reasons given at IR12.207-208, he agrees that opening up pedestrian access to the site from the southern end of Lower Twydall Lane and financial contributions towards bridleway improvements attract limited weight. For the reasons given at IR12.209 he further agrees that the planning obligation which includes a contribution towards interim assistance to support bus service provision is a consideration that attracts moderate weight.

38. With regard to the school proposed on the site, for the reasons given at IR12.211 the Secretary of State agrees that its provision attracts limited weight. For the reasons given at IR12.211 the Secretary of State also agrees that provision of the two care facilities attracts limited weight.

39. The Secretary of State further agrees with the Inspector's conclusions with regards to matters at IR12.200, IR12.210, IR12.212, IR12.213 and IR12.214 for the reasons given there.

Other matters

40. The Secretary of State notes that the Medway Estuary and Marshes Special Protection Area (SPA), Ramsar and Site of Special Scientific Interest (SSSI), a European Protected site, lies approximately 250m to the north of the appeal site (IR12.195). For the reasons given at IR12.196, he agrees that ecological impact is not a main consideration.

41. For the reasons given at IR12.197 the Secretary of State agrees that an Appropriate Assessment under the terms of the Conservation of Habitats and Species Regulations 2017 (as amended) is required should the appeal be allowed.

42. The Secretary of State is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017. The Secretary of State agrees with the assessment and findings in Annex E of the IR. However, he does not consider that carrying out an Appropriate Assessment would overcome his reasons for dismissing this appeal, and has therefore not proceeded to make an Appropriate Assessment in his role as the Competent Authority on this matter.

Planning conditions

43. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-IR10.20, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

44. Having had regard to the Inspector's analysis at IR11.1-IR11.4, the planning obligation dated 14 May 2021, paragraph 57 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR11.4 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 57 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

45. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with development plan Policies T1, BNE14, BNE34 and BNE47, BNE18 and BNE25, and considers that overall, the proposal is not in accordance with the development plan. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

46. As Medway Council is unable to demonstrate a five year supply of housing land, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.

47. Weighing in favour of the proposal are the delivery of housing in the light of housing supply shortfall, and the delivery of affordable housing, biodiversity improvements and employment provision. Each carries substantial weight. Public transport improvements attract moderate weight, while highways improvements, improvements to pedestrian access and contributions toward bridleway works, and the benefits arising from the school and care facilities each attract limited weight.

48. Weighing against the proposal are significant landscape harm which attracts substantial weight, and severe residual impacts on the local road network which also attract substantial weight. Loss of BMV land attracts moderate weight. In line with statute and policy, the 'less than substantial' heritage harms attract considerable weight in the planning balance.

49. Paragraph 202 of the Framework requires heritage harm to be weighed against the public benefits of the scheme. The Secretary of State agrees with the Inspector for the reasons given at IR12.217-12.220 that the very substantial benefits of the appeal scheme are sufficient to outweigh the identified heritage harm both individually and collectively (IR12.220). He considers that the balancing exercise under paragraph 202 of the Framework is therefore favourable to the proposal.

50. Consequently, under limb (i) of the test at Framework paragraph 11(d) the Secretary of State considers that there are no protective policies which provide a clear reason for refusing the development proposed. However, for the reasons given in this decision letter the Secretary of State considers that limb (ii) of the 11(d) test is met, i.e. the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole. The presumption in favour of sustainable development is therefore disapplied.

51. The Secretary of State takes the age of the Local Plan and the significant shortfall in housing land supply very seriously. However, on the particular facts of this case, he considers that the material considerations indicate a decision in line with the development plan – i.e. a refusal of permission.

52. The Secretary of State therefore concludes that the appeal should be dismissed.

Formal decision

53. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for redevelopment of land off Pump Lane to include residential development comprising up to 1,250 residential units, a local centre (with final uses to be determined at a later stage) a village green, a two form entry primary school, a 60 bed extra care facility, an 80 bed care home and associated access (vehicular, pedestrian, cycle), in accordance with application No MC/19/1566, dated 3 June 2019.

Right to challenge the decision

54. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

55. A copy of this letter has been sent to Medway Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

M A Hale

Mike Hale

This decision was made by the Minister of State for Housing on behalf of the Secretary of State, and signed on his behalf

Annex A Schedule of representations

General representations

Party	**Date**
Rehman Chishti MP	6 October 2021
Duncan Parr, Rapleys LLP	15 October 2021
Peter Canavan, Carter Jonas	22 October 2021
Duncan Parr, Rapleys LLP	29 October 2021

The Planning Inspectorate

Report to the Secretary of State for Housing, Communities and Local Government

by Mrs J A Vyse DipTP DipPBM MRTPI

an Inspector appointed by the Secretary of State

Date: 7th July 2021

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

APPEAL MADE BY

A C GOATHAM AND SONS

AGAINST

MEDWAY COUNCIL

Inquiry opened on 15 February 2021

Pump Lane, Rainham, Gillingham ME8 7TJ

Appeal Ref: APP/A2280/W/20/3259868

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File Ref: APP/A2280/W/20/3259868
Pump Lane, Rainham, Gillingham ME8 7TJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by A C Goatham and Sons against the decision of Medway Council.
- The application No MC/19/1566, dated 3 June 2019, was refused by a notice dated 12 June 2020.
- The development proposed comprises redevelopment of land off Pump Lane to include residential development comprising up to 1,250 residential units, a local centre (with final uses to be determined at a later stage) a village green, a two form entry primary school, a 60 bed extra care facility, an 80 bed care home and associated access (vehicular, pedestrian, cycle).

Summary of Recommendation: That the appeal be dismissed.

Documents handed up to the Inquiry (Inquiry Documents) are listed at Annex B below and are prefixed with ID. Core Documents, listed at Annex C, are prefixed with CD. The Core Documents plus the Inquiry Documents can be accessed via the electronic library https://rapleys.com/lower-rainham-appeal/

1. PROCEDURAL AND BACKGROUND MATTERS

1.1 At the Inquiry, an application for a partial award of costs was made by Medway Council against the Appellant.[1] That application is the subject of a separate Report.

1.2 By letter dated 17 November 2020, the appeal was recovered by the Secretary of State for his determination on the grounds that it '*involves proposals for residential development of over 150 units, or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.*'

1.3 The Inquiry opened on Monday 15 February 2021 and sat on a total of 16 days (15-18 and 22-23 February, 1-3 and 5 March, 19-23 and 28 April).[2] With the assistance of the Council, the Inquiry sitting days were live streamed[3] to allow members of the public to view the proceedings. I undertook the site visit on an accompanied basis on 4 March 2021, following an extensive and comprehensive itinerary prepared by the parties, with input from Councillor Potter. I closed the Inquiry on 28 April 2021.

1.4 The application was submitted in outline, with only access to be considered at this stage. Matters relating to appearance, landscaping, layout and scale are reserved for future consideration.

1.5 The description of development as set out on the planning application form referred, among other things, to 'approximately' 1,250 dwellings. The term 'approximately' is ambiguous and I was mindful that the evidence, in various

[1] ID47 (Council's application), ID48 (Appellant's rebuttal) and ID53 (Council's response)
[2] Although recorded as sitting days, we resumed for just 20 minutes on 5 March to deal mainly with the revised Building Heights Parameter Plan (see paragraphs 1.11-1.13 below) and corresponding notes (ID29 and ID30) and on 23 April we sat for just one hour 20 minutes to deal mainly with ID45 (affordable housing delivery) and ID46 (policy T1 and paragraphs 108-111 of the Framework).
[3] The recordings are available online (Medway Inquiry)

places, refers to 'up to' 1,250 dwellings. With the agreement of the parties, the description of the development proposed was amended accordingly and is reflected in the header above.

1.6 A total of nine reasons for refusal are set out on the Council's Decision Notice.[4] Subsequent to determination of the application, the Appellant provided additional information in relation to some of the concerns raised, together with revised plans. The material submitted essentially provides additional information and clarity on some points, as opposed to changing the nature of the development for which permission is sought. Nevertheless, in order to ensure that no interests would be prejudiced were a decision to be made on the basis of that material the Appellant, working with the Council, undertook a consultation exercise. I am satisfied that the additional material does not offend the Wheatcroft principles[5] and the Inquiry proceeded on that basis. I confirm that in making my recommendation, I have taken account of all the representations received in response to that re-consultation exercise, in addition to the large body of representations made at the application and appeal stages.

1.7 The appeal was accompanied by a draft deed of agreement under the provisions of Section 106 of the Town and Country Planning Act 1990 (as amended) setting out a range of obligations, covenants and undertakings.[6] The provisions secured are a material consideration and are dealt with in more detail later on in this Report. With the agreement of the parties, a completed version of the document was submitted shortly after the close of the Inquiry.[7]

1.8 At my request, a number of Statements of Common/Uncommon Ground (SoCGs) were prepared by the main parties to inform the various proofs. As set out in the General Matters SoCG,[8] in light of the more detailed information now submitted and the planning obligations anticipated as being secured, the Council did not pursue those reasons for refusal (RfRs) relating to effects on the Medway Estuary and Marshes SSSI, Special Protection Area and Ramsar site (RfR1); effect on the strategic road network (RfR4); effect on highway safety (RfR6); insufficient details in relation to the Pump Lane access points (RfR7); and necessary infrastructure/related financial contributions (RfR9).

1.9 The planning application was accompanied by an Environmental Statement (May 2019)[9] which was followed by a Supplementary Environmental Statement (March 2020).[10] A further Supplementary Environmental Statement was prepared in September 2020 to accompany the appeal.[11] A Consolidated Environmental Statement and accompanying Non-Technical Summary (September 2020) represents the combining of both the original Environmental Statement and its Non-Technical Summary, and the two Supplementary Environmental Statements and their respective Non-Technical Summaries (subject to the amendments and deletions as referenced in the two later

[4] CD7.1
[5] *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]
[6] ID22
[7] ID55
[8] SoCG on General Matters (CD11.1)
[9] CDs 5.18-5.45
[10] CD6.11
[11] CDs 8.4 and 8.5

documents).[12] It is a composite document put together for ease of reading and reference.

1.10 On 12 January 2021, the Planning Inspectorate (on behalf of the Secretary of State) confirmed that the Environmental Statement was satisfactory in terms of Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017. I have taken all the environmental information into consideration in my assessment and recommendation.

Building Heights Parameter Plan

1.11 During the third week of the Inquiry, after all the evidence on heritage, landscape/visual impact and agricultural land had been heard, the Appellant sought to submit a revised Building Heights Parameter plan.[13] The plan that had informed the evidence already given to the Inquiry in relation to heritage and landscape matters (Plan No 11047 PL004 Rev B)[14] showed development of up to 12 metres in height across the whole site, other than for the areas for the proposed school and village centre, where the maximum height was set as 10 metres. In broad terms, the amended plan (Plan No 11047 PL011 Rev B)[15] shows a maximum building height of 12 metres across the northern part of the site (save for the areas for the school and villages centre where the maximum height is shown as 10 metres) and a maximum building height of 10 metres across the southern part of the site.

1.12 The Council was provided with the opportunity to provide a response to the amended plan, as was Historic England. Historic England confirmed that the changes did not fundamentally alter its original conclusions and that its formal position remained as set out in its response to the Council dated 1 August 2019, namely that it continues to have concerns regarding the application on heritage grounds and considers that the application fails to meet the requirements of the Framework in particular paragraphs 190 and 194.[16] The Council's response also confirmed that the revised building heights parameters would not give rise to likely significant environmental effects any greater than those already assessed within the Environmental Statement(s) and through the evidence given to the Inquiry, on the basis that it reduced the maximum building heights across part of the site.[17] The Council's response also included confirmation from its respective witnesses, Mr Etchells (landscape) and Ms Wedd (heritage) that, whilst limiting the height of buildings within the higher, southern part of the site would reduce the likely landscape, visual and heritage effects slightly, that was not to the extent that it led to any material change in the category of effect of the development and its overall impact.

1.13 Shortly before the end of the Inquiry, the Appellant submitted a further Note which included, among other things, a review of the Council's response above.[18] It sets out that the revisions would reduce the impact of the development proposed, and confirms that the overall assessments set out in

[12] CD8.3
[13] ID29
[14] Appendix 6 to the Appellant's Statement of Case (CD8.1)
[15] Appended to ID29
[16] ID33
[17] ID30 (Comprises initial response plus addendum note)
[18] ID38

the evidence and conclusions of the Appellant's respective witnesses, Mr Hughes (landscape) and Ms Stoten (heritage) remain largely unchanged.

Highways Mitigation

1.14 Part way through the Inquiry, on the day before the highways modelling evidence was due to be heard, and notwithstanding its case that the original mitigation proposed was, in its view, sufficient, the Appellant submitted new mitigation proposals in relation to the configuration of the Toucan crossing to the east of Bowaters roundabout and additional lane capacity, plus revised lane markings and additional lane capacity at Will Adams roundabout.[19]

1.15 The proposed alterations relate to the performance of the local highway network, as opposed to any changes that might have a material impact in terms of visual amenity or which would materially change the nature of the scheme for which permission is sought. On that basis, although I had to adjourn the Inquiry in order to allow the Council to factor the additional mitigation into its Medway Aimsum Model to assess the impacts of the revised arrangements, I am satisfied that there was nothing to be gained by undertaking any wider re-consultation on the material submitted. I am content that no-one's interests have been materially prejudiced in this regard.

1.16 The additional mitigation measures are the subject of an Addendum Highways Statement of Common Ground.[20] As set out in that Addendum, at a subsequent meeting between the parties on 24 February 2021 to discuss and clarify the intended measures to be modelled, the Appellant proposed additional mitigation measures comprising revised signal timings for Bowaters roundabout. A follow up email from Mr Tucker (for the Appellant) dated 28 February 2021 further amended the proposed mitigation schemes, including a revision to the original proposed mitigation works at the Yokosuka Way/Lower Rainham Road roundabout, together with revised signal timing files for the Otterham Quay Lane/Meresborough Road signalised junction.[21]

1.17 With the exception of the revised mitigation works at Yokosuka Way/Lower Rainham Road roundabout,[22] the Council undertook a new modelling assessment incorporating these additional mitigation works, the outcome of which is presented in the Sweco Lower Rainham Report Addendum 3.[23] The Council also requested a Stage 1 Road Safety Audit, which was subsequently received.[24]

2. THE SITE AND ITS SURROUNDINGS[25]

2.1 The appeal site sits within a broadly rectangular area of countryside to the east of Gillingham and Chatham, northwest of Rainham. To the north-west, the site is bounded by agricultural fields between the site and the hamlet of Lower

[19] ID39
[20] ID42
[21] Appendix B to ID42
[22] ID42 paragraph 3.5
[23] ID 34 and ID 34a (the latter corrects annotations to some of the tables)
[24] ID 40
[25] More detail can be found in, *inter alia*, the Design and Access Statement (CD5.10), the Appellant's Planning Statement (CD5.11) the revised LVIA (CD8.3 Appendix 11.1a) the proofs of evidence for Messrs Hughes and Etchells (CDs 10.3 and 10.8) and Messrs Parr and Canavan (CDs 10.1 and 10.6) and the General Matters SoCG paragraphs 3.1-3.9 (CD11.1).

Twydall/Lower Twydall Lane. To the north and northeast, it is bounded partly by the buildings that comprises the small settlement of Lower Rainham and by the B2004 Lower Rainham Road. Both Lower Twydall and Lower Rainham are designated Conservation Areas. Beyond the main road to the north are further agricultural fields and paddocks alongside the Medway River Estuary, which lie within the Riverside Country Park.[26] The long distance Saxon Shore Way footpath runs along the coastline at this point. To the north of the Estuary is the low ridge of the Hoo Peninsula.[27]

2.2 To the southeast, the site is adjoined by allotments and Lower Bloors Lane, beyond which is the Bloors Lane Community Woodland and the urban area of Rainham. To the southwest, the site is separated from the built up area of Twydall by the Gillingham to Sittingbourne railway line, which is elevated above the landscape of the appeal site on a slight embankment.

2.3 Covering some 51.5 hectares, the site itself extends for some 1.2km from Lower Twydall Lane in the west to Lower Bloors Lane in the east, and for some 0.7km from the railway line in the south to Lower Rainham Road in the north, sloping gently down from southwest to northeast towards the Estuary. The site comprising two farms, Pump Farm (the western half of the site) and Bloors Farm (the eastern half) which are separated by Pump Lane, a narrow country lane, approximately 4m wide. The lane, which is generally excluded from the site boundary (although extensive works are proposed to the lane as part of the appeal scheme) runs roughly north/south, from Lower Rainham Road, passing beneath the railway and extending to Beechings Way within the urban area beyond.

2.4 The site is currently planted as commercial apple orchards, with tall windbreak hedges surrounding around the site boundaries and separating some individual orchard blocks in places within the site. A couple of buildings used for storage and other uses in connection with the orchard use are located on the western half of the site, accessed off Pump Lane, together with a number of seasonal workers' caravans. A bridleway (No GB6a) extends south-eastwards from Pump Lane, bisecting the Bloors Farm part of the site, to join with Lower Bloors Lane. Its route is largely enclosed by tall conifer hedging although there are views out from the route at field gates, and along stretches where the hedge on the opposite side of the route to the conifer hedge is lower or has some gaps.[28]

3. THE PROPOSAL[29]

3.1 The illustrative masterplan[30] shows a residential-led scheme of up to 1,250 dwellings, together with a range of additional uses to support a new village settlement. At the heart of the development would be a village green,

[26] See Figure 3 in Mr Hughes proof Volume 2 (CD10.3)
[27] ID18 shows the location of the appeal site in its wider context. The appeal site is site 1 on that map.
[28] Mr Etchells photos 23-3 (CD10.8) and Mr Hughes Volume 2 photoviewpoints 14a, 14b and 15
[29] More detail can be found in, *inter alia*, the Design and Access Statement (CD5.10), the Appellant's Planning Statement (CD5.11) the revised LVIA (CD8.3Appendix 11.1a) the proofs of evidence for Messrs Hughes and Etchells (CDs 10.3 and 10.8) Messrs Parr and Canavan (CDs 10.1 and 10.6) the General Matters SoCG (CD11.1) and on the submitted plans appended to the Appellant's Statement of Case (CD8.1).
[30] Dwg 11047 PL009C (Appendix 5 to the Appellant's Statement of Case (CD8.6) as amended by the plans at ID20

adjoined to the south-east and east by residential development, and to the north by a new local centre.

3.2 The housing would comprise a mix of dwelling types and sizes, including a proportion of self-build/custom build plots. The local centre includes a strategic community hub comprising up to 1,000 square metres of retail, business and community space, a two form entry nursery/primary school and a care facility comprising a 60 bed extra care unit and an 80 bed care home. Residential use would also form part of the local centre, with flats above the commercial uses.

3.3 As noted above, the revised Building Heights Parameters Plan[31] shows a maximum building height of 12 metres across the northern part of the site, closer to Lower Rainham Road (save for the areas for the school and village centre where the maximum height is shown as 10 metres) and a maximum building height of 10 metres across the slightly more elevated southern part of the site towards the boundary with the railway line.

3.4 The main point of access would be via a new T-junction onto Lower Rainham Road, which would be widened on its southern side at that point to allow for a ghost island for right turning traffic entering the site. An internal estate road would loop through the western part of the site, crossing Pump Lane towards its southern end (to the north of the existing railway bridge/underpass) into the eastern part of the site, crossing the bridleway before returning to cross Pump Lane at a point to the north of Pump Farm. The arrangement would allow existing residents continued north-south access along Pump Lane, albeit realigned in places and with new junctions where it would be crossed by the estate loop road.[32] Off-shoot roads from the main loop within the site would serve the local centre and residential areas.[33]

3.5 Whilst landscaping is a reserved matter, the latest iteration of the Appellant's Landscape and Visual Impact Assessment, dated September 2020,[34] includes an illustrative Landscape Framework Plan.[35] The proposed landscaping and public open space includes a village green and a landscape buffer zone around the perimeter of the appeal site and along the internal loop road, in addition to landscaping between the various development parcels. The open space includes community orchards[36] along sections of Pump Lane and around the rear of Russett Farm (a small development of residential properties adjacent to Pump Farm) three equipped children's play areas, dog walking routes and improvements to the existing bridleway.

4. PLANNING POLICY AND GUIDANCE

4.1 In addition to the National Planning Policy Framework (the Framework) and the Government's Planning Practice Guidance, reference was made to policies in the development plan, which includes saved policies from the Medway Local Plan (2003).

[31] ID29
[32] ID20 shows the new junction arrangements in more detail.
[33] See the Movement Parameter Plan (Dwg No PL007 Rev D appended to ID20)
[34] CD8.3 Appendix 11.1a (section 6) See also Figure 8 in volume 2 of Mr Hughes evidence (CD10.3)
[35] Mr Hughes Volume 2 figure 8 see also his proof paragraph 4.5 and Dwg Nos 11047/PL/009C and /005B (Appendices 5 and 6 to CD8.6)
[36] Dwg 11047 PL009C (Appendix 5 to the Appellant's Statement of Case (CD8.6) and ID26

4.2 The Local Plan identifies a number of strategic objectives to guide the strategy for Medway. These include:

- New development should follow sustainable development principles through its relationship to transport infrastructure, the location and mix of uses and the use of natural resources.
- The emphasis should be on creating an urban renaissance, through the redevelopment of brownfield sites within the urban area in preference to continued outward suburban expansion. The development of greenfield sites should be restricted to those well related to the structure of the urban area and avoiding visual intrusion into the surrounding countryside, particularly the valuable urban fringe.
- The environmental quality and image of the area should be upgraded through the highest urban design and landscape standards being pursued in new development and regeneration.
- The widening of transport choices and accessibility, and a reduction in the reliance on the private car by improvements to facilities for cycling, walking and public transport.
- Firm protection for the Green Belt, the best and most versatile agricultural land, sites of international, national and other strategic importance for nature conservation and landscape.
- Identifying the built heritage of Medway as an important historical and cultural resource.

4.3 The defined objectives inform a number of strategic development principles, which in turn, are reflected in the detailed policies of the Plan. These include:

4.4 Policy S1: Development Strategy, which prioritises re-investment in the urban fabric, including the redevelopment and recycling of under-used and derelict land within the urban area. Land use and transport would be closely integrated, with priority given to a range of new and improved transport facilities. In recognition of their particular quality and character, long-term protection is afforded to areas of international, national or other strategic importance for nature conservation and landscape, and the historic built environment. Outward peripheral expansion onto fresh land, particularly to the north and east of Gillingham is severely restricted.

4.5 Policy S6: Planning Obligations sets out how the Council will apply conditions on planning permissions, or seek to enter into a legal agreement with developers, to provide for new physical infrastructure, social, recreational and community facilities (including education facilities) and environmental mitigation or compensation measures where mitigation is impossible or inadequate on its own.

4.6 Policy BNE1: General Principles for Built Development requires that the design of new development is appropriate in relation to the character, appearance and functioning of the built and natural environment by:

i) being satisfactory in terms of use, scale, mass, proportion, details, materials, layout and siting; and

(ii) respecting the scale, appearance and location of buildings, spaces and the visual amenity of the surrounding area; and

(iii) where appropriate, providing well structured, practical and attractive areas of open space.

4.7 Policy BNE2: Amenity Protection seeks to ensure appropriate living conditions for future occupiers and to protect those of nearby and adjacent properties.

4.8 Policy BNE12: Conservation Areas reflects the statutory duty set out at Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, requiring that special attention be paid to the preservation and enhancement of the character and appearance of Conservation Areas.

4.9 Policy BNE14: Development in Conservation Areas requires that development within Conservation Areas, or affecting their setting, should achieve a high quality of design which would preserve or enhance the area's historic or architectural character or appearance.

4.10 Policy BNE18: Setting of Listed Buildings reflects the statutory duty set out at Section 66 of the Planning (Listed Buildings and Conservation Areas) Act, resisting development that would adversely affect the setting of a listed building.

4.11 Policy BNE21: Archaeological Sites seeks to ensure that potentially important archaeological sites are assessed at the earliest possible stage where they might be affected by development. On such sites, it requires that a field evaluation is carried out before any decision is made on the planning application.

4.12 Policy BNE24: Air Quality resists development where unacceptable effects would be imposed on the health, amenity or natural environment of the surrounding area, taking into account the cumulative effects of other proposed or existing sources of air pollution in the vicinity.

4.13 Policy BNE25: Development in the Countryside is permissive of development in the countryside only where it maintains, and wherever possible enhances, the character, amenity and functioning of the countryside, where it offers a realistic chance of access by a range of transport modes, and where it is either on a site allocated for that use or meets one of a number of other specified criteria. Countryside is defined as that land outside the urban and rural settlement boundaries shown on the Proposals Map.

4.14 Policy BNE34: Areas of Local Landscape Importance is permissive of development within defined Areas of Local Landscape Importance only where it would not harm the landscape character and function of the area , or where the economic and social benefits are so important that they outweigh the local priority to conserve the landscape of the area. Development within an Area of Local Landscape Importance should be sited, designed and landscaped to minimise harm to the landscape character and function of the area.

4.15 Policy BNE35: International and National Conservation Sites confirms the sites to which long-term protection will be given. Among other things, development that would materially harm, directly or indirectly, the scientific or wildlife interest of those sites is not permitted unless the development is connected with, or necessary to, the management of the site's wildlife interest.

4.16 Policy BNE36: Strategic and Local Nature Conservation Sites gives long term protection to the sites identified as such on the Proposals Map.

4.17 Policy BNE37: Wildlife Habitats resists the loss, either directly or indirectly, of important wildlife habits or features not protected by other policies, other than in certain circumstances.

4.18 Policy BNE38: Wildlife Corridors and Stepping Stones requires that development should make provision for wildlife habitats as part of a network of wildlife corridors or stepping stones.

4.19 Policy BNE39: Protected Species resists development that would harm statutorily protected species and/or their habitat.

4.20 Policy BNE47: Rural Lanes is only permissive of development served by and/or affecting important rural lanes defined on the Proposals Map where there would be no adverse effect upon the value of the lane in terms of its landscape, amenity, nature conservation, historic or archaeological importance. Where alterations to the carriageway definition/boundaries of rural lanes is necessary, the use of locally distinctive materials such as grass banks, stone setts and hedging would be required. The use of urbanising features such as raised concrete kerbstones, fencing and walls should be avoided unless these are absolutely essential for structural or safety reasons.

4.21 Policy H3: Affordable Housing requires that, where a need is identified, affordable housing will be sought as a proportion of residential developments of a substantial scale as defined by the policy.

4.22 Policy H10: Housing Mix sets out that on sites larger than one hectare, where residential development is acceptable in principal, the provision of a range and mix of house types and sizes will be sought.

4.23 Policy L4: Provision of Open Space in New Developments requires that, where there is a proven deficiency, development schemes shall make open space provision in accordance with specified criteria.

4.24 Policy CF2: New Community Facilities is permissive of such development subject to criteria relating to size and scale, its impact on the countryside, residential amenity, landscape or ecology, with regard to be had to its accessibility by a variety of means of transport.

4.25 Policy T1: Impact of Development is permissive of development proposals provided that, when assessing the highways impact:

i) the highway network has adequate capacity to cater for the traffic which would be generated by the development, taking into account alternative modes to the private car; and

ii) the development would not significantly add to the risk of road traffic accidents; and

iii) the development would not generate significant H.G.V. movements on residential roads; and

iv) the development would not result in traffic movements at unsociable hours on residential roads that would be likely to cause loss of residential amenity.

4.26 Policy T2: Access to the Highway sets out a general expectation ensuring safe access and egress to and from a development site.

4.27 Policy T3: Provision for Pedestrians requires that development proposals provide attractive and safe pedestrian access, and maintain or improve pedestrian routes related to the site.

4.28 Policy T4: Cycle Facilities requires that major trip attracting development proposals should make provision for cycle facilities related to the site. Secure cycle parking and associated facilities are also sought in accordance with the council's adopted cycle parking standards.

4.29 Policy T6: Provision for Public Transport requires that where development is of sufficient scale, provision shall be made for access by public transport.

4.30 Although the Council's Decision Notice includes reference to policy BNE48: Agricultural Land, this is not a saved policy and it was confirmed as being cited in error. The policy does not form part of the current development plan.

4.31 Other relevant documents and guidance include:

4.32 *Medway Landscape Character Assessment (2011):*[37] this is a landscape planning guidance document for use when considering the appropriateness and sensitivity of new development proposals within the countryside and the urban-rural fringe areas of Medway. It supports and informs the Council's landscape planning policies.

4.33 *Medway Guide to Developer Contributions and Obligations (2018):*[38] this provides advice on how to determine contributions and includes technical details for services for which contributions may be sought.

4.34 *Strategic Assessment Management and Mitigation – Medway Council Interim Policy Statement (November 2015):*[39] this sets out the Council's position on a strategic approach to managing and mitigating the potential impact to the protected habitats of the Thames, Medway and Swale Estuary and Marshes Special Protection Areas and Ramsar sites, in advance of adopting an appropriate policy in the emerging Local Plan.

4.35 *Local Transport Plan 4: Delivering Growth without Gridlock 2016-2031*:[40] the Plan identifies the County Council's transport priorities and the investment required to support growth.

4.36 The Council is preparing a new Local Plan to set out how the area would develop to 2035. It is still at an early stage - Regulation 18 consultation has been undertaken, but it has not yet reached Regulation 19 stage. The Local Development Scheme schedules submission of the Plan for Examination in December 2021, anticipating adoption in December 2022. In light of its early stage, no weight is afforded to it. As set out in the SoCG on General Matters, the Council takes no issue in terms of prematurity in this regard.[41]

[37] CD3.4
[38] CD3.1
[39] CD3.2
[40] CD3.6
[41] CD11.1 paragraph 4.26

5. AGREED MATTERS

5.1 As confirmed in the SoCG on General Matters,[42] the five year housing land supply range argued by the parties ranges from 1.78-3.03 years. The SoCG also confirms that, by the time of the Inquiry, the main areas of difference between the main parties had been refined as landscape and visual impacts; the degree of harm to a range of heritage assets and how any harm weighs against public benefits of the scheme; the level of effect on the capacity of the local highway network and the residual cumulative impact; and the weight to be given to the loss of some 51.5 hectares of best and most versatile agricultural land, the loss of the existing agricultural production on the site, and the financial viability of continued agricultural use of the land.

5.2 At my request, a number of topic specific statements were prepared in relation to Heritage, Landscape, Transport and Agricultural Land. [43] In addition, I asked for a Position Statement setting out the parties' respective positions in relation to the various policies engaged by the development proposed, including whether or not they can be considered as up to date, whether they should be considered as one of the most important policies for determining the appeal, and the weight that should be afforded to any conflict with them.[44]

6. THE CASE FOR A C GOATHAM AND SONS (THE APPELLANT)

This section is based on the closing submissions for the Appellant.[45]

Introduction

6.1 The appeal site is sustainably located within accessible proximity to the centres of Rainham, Twydall and employment sites, and integrates very well with sustainable transport options. The appeal scheme accords with the development plan when considered as a whole, and is in accordance with national policy. As such, the proposal should be approved on application of the tilted balance. Alternatively, it should be approved even absent the tilted balance, and even as a 'departure' from the development plan (*if* it were ever conceived to amount to a departure, which it is not).

6.2 The development would make a highly important contribution to the Council's chronic housing shortage, to be viewed against its own under-acknowledgement of a significant housing land supply shortfall. A troubling shortfall in affordable housing provision[46] further echoes the clear and ongoing strategic plan and development management failures of the Council to approve and deliver housing, District-wide. No plan-led resolution to this delivery crisis is within sight - the Council's timetable for adopting a new Local Plan is just

[42] CD11.1
[43] SoCG on Heritage (CD11.2); SoCG on Landscape Matters (CD11.3) which is in two parts, the second part comprising a video clip of views of the appeal site from the train; SoCG on Transport Matters (CD11.5); SoCG on Best and Most Versatile Agricultural Land (CD11.5). During the Inquiry, I received an Addendum Highways SoCG (ID42)
[44] CD11.6 **INSPECTOR'S NOTE**: Mr Canavan (for the Council) verbally corrected some of his entries on the table. The weight to be afforded in his view to policy BNE25 (page 2) was confirmed as limited (instead of medium); the weight in his view to be afforded to policy BNE48 (page 4) was confirmed as none (as opposed to limited); and the weight he considered should be afforded to policy S1 (page 5) was confirmed as limited (as opposed to full). In addition, the Appellant revised its position in relation to policy T1, as set out in ID46
[45] ID 51
[46] ID45

shy of two years from now. The Council is, in truth, pointing to 'plan-led' delivery under this new plan from 2025 or later. That is no plan whatsoever.

6.3 The appeal proposal also comes at a unique time of the UK entering a massive economic slump. The clear, significant economic and social gains that would be delivered through the appeal scheme at local, regional and indeed national level, are the more striking ahead of, and during, what will be a much protracted, if presently masked, period of downturn and slow recovery.

Housing

6.4 The starting point remains the Council's understated characterisation of a significant undersupply of housing land. Its reported annualised requirement is 1,662 dwellings per annum. Meeting the requirement figure has demonstrably posed an unmet challenge. Against this background, the scale of housing contribution from this development holds tremendous importance in both economic and social terms at a time of pressing and urgent crisis.

6.5 In addition to open market housing, the affordable housing contribution presents another major social and economic benefit. Any quantum of affordable housing is routinely accorded substantial weight in recovered appeal decision-taking, with a view to meeting a communities' assessed need and reducing the backlog of households awaiting affordable housing, in addition to newly forming households, as a central plank of national planning policy.

6.6 There is also real justification in scrutinising the Council's unfounded optimism against the Appellant's realism regarding future housing delivery, given the Council's poor track record. The Council places broad reliance on high level AMR evidence, as opposed to any forensic analysis of supply, still less any site-specific evidence showing any actual assessment, in support of its claim of 3.03 years supply.

6.7 The development is brought forward against the background of an aged Local Plan, where the 'most important' policies are out of date, by virtue of the lack of a five year supply of deliverable housing sites within the local authority area and delivery (based on Housing Delivery Test) being less than 75% of the housing requirement over the previous three years. Moreover, the policies in the aged Local Plan[47] fail to reflect the national policy approach to sustainability. Much is out of date by virtue of inconsistency with the National Planning Policy Framework (the Framework) (eg policy T1[48]) even if it was not by virtue of the Council's housing land position. The local plan-making process is so far off, with emerging policy not in sight, that no weight may properly be attached.

6.8 Consequently, the very significant extent of housing shortfall would continue to go unmet, both in market housing and affordable housing terms. The shortfall is so chronic, and the Council's steps too late and insufficient, that the weight can, at best, only be limited. The strategic vision for housing delivery set out in the Local Plan has failed.

[47] CD10.1 Mr Parr PoE 6.7
[48] ID46

6.9 Evidently, there has been a chronic and long-established failure of the development plan, reflected by Council's decision-taking, to deliver housing for the District.[49] This provides important background to the consideration of the development, alongside all most important policies relevant to determination being treated as out of date, by virtue of paragraph 11 of the National Planning Policy Framework (the Framework).

6.10 The scheme is in accordance with the development plan. This is especially so when it is understood that compliance includes broad compliance and does not require compliance with every single relevant policy. Material considerations, including compliance with national policy, weigh further in favour of approval.

6.11 Policies relevant to determination are set out in the SoCG on General Matters.[50] It is seemingly agreed by the Council that the basket of policies cited in the remaining reasons for refusal are '*most important'* policies in the determination of the appeal, save for acknowledging the Council's confirmation that policy BNE48 is not a saved policy and carries no weight.

6.12 This plainly holds local, regional and national importance: the lives of a huge number remain negatively affected by an inability to access housing suitable to meet their needs. The national policy emphasis for ramping up supply, improving affordability and widening housing choice, is purposeful. For Medway, the 20% buffer is to be applied due to the significant under delivery over the previous three years against the Housing Delivery Test (HDT). In HDT scoring terms, this Council falls within the top ten worst performing authorities within the country. Moreover, the five year supply figure is only an absolute minimum figure to be achieved in the context of the Government's ambition to significantly boost the supply of housing.

6.13 The agreed housing supply range, being no higher than 3.03 years[51] on the Council's own case – but, in reality being below two years - is coupled with the equally sobering rate of historic under delivery of housing throughout the Local Plan period.[52] This is also replicated in the supply and delivery of affordable housing. This sustained and significant shortfall has remained despite the preparation of action plans by the Council, echoing the decision-taking as well as policy failures. The historic delivery picture means that new housing remains well below the annual requirement.

6.14 The extent of the shortfall is material even in a case, as here, where the housing position is disastrous.[53] On any case, the Council's wholly aspirational ceiling still merits the conclusion of the uppermost substantial weight. There is absolutely no requirement on an applicant even to show that there is *any* shortfall in the five year housing land supply in order to secure permission, including for larger schemes.

6.15 The Council's contended best supply figure of 3.03 years takes no account of historic shortfall.[54] Whatever reliance is placed on the affordability ratio, the

[49] Housing table ID 32
[50] CD11.1 General SoCG Paragraph 4.5 page 7
[51] CD11.1 SoCG paragraph 5.1.7
[52] ID32 Medway Housing table
[53] *Shropshire v SSCLG* [2016] EWHC 2733 (Admin) at [28]-[30], refined in *Hallam Land v SSCLG and Eastleigh BC* [2017] EWHC 2865 (Admin) at [22]-[23]
[54] ID32

reality of the extent of unmet need remains. The standard methodology is not intended to be so formulaic as to leave no room for discretion where there is exceptionality. The situation in Medway provides ample exception. National policy is not intended to excuse persistent and chronic under-delivery. So, the fact that the numbers involved are so high, so persistent, and so far-reaching, provides a pertinent lens through which the coming forward of up to 1,250 units should be considered.

6.16 The Appellant has submitted a detailed analysis of housing supply and delivery, justifying a finding of 1.78 years.[55] No challenge has been made to the figures or methodology[56] save, principally, for the inclusion of shortfall.

6.17 In that context, very substantial weight (at the uppermost end of 'substantial') should be given to the contribution of the appeal scheme in market housing and affordable housing terms. Mr Canavan's laboured contention[57] that the Council is making significant steps to boost housing supply defies belief and is a further symptom of a deeply failing planning function. The contended measures in this regard are indeed standard for any Authority, with no further toolkit being deployed to even rescue the HDT position. The list of consents cited by Mr Canavan[58] do not portray any enhanced drive to deliver on housing.

6.18 The affordable housing provision set out by the Appellant[59] is unchallenged by the Council, bar overarching observations. It shows a shortfall of 5,029 homes between 2012-2017 equating to 1,006 per annum. There is nothing to suggest that this pattern of significant under supply has changed in subsequent years and the Table in ID45 confirms that the level of affordable delivery is low.

6.19 The back-dated, annualised target figure of 204 units bears no justification and is plainly far too low. The figure is also less than 30% of the 744 annual need figure stated in Medway's Strategic Market Assessment 2015. Even when viewed as a guide, the Council has only met the 204 figure within six of the last nine years. This consolidates its failure to take steps to address another chronic annual deficit in affordable housing. This invites very substantial weight (or substantial at the uppermost end) in favour of the appeal scheme.

6.20 There is no live issue engaging the proposition in *Kings Lynn and West Norfolk v Secretary of State for Communities and Local Government* [2015] EWHC 2464 (paragraphs 32-37). It is not advanced by the Appellant that national policy *requires* LPAs to meet their affordable housing needs in full, but there is plainly every significance in the Council doing so, and every significance in the Council not doing so, given its housing land position. Hence, the material consideration arising is no less significant for the absence of a requirement.

6.21 Against the historic under supply and delivery, the Council seemingly points to two factors,[60] that it is now improving, and the plan-led system with reliance

[55] CD5.12 Housing Report
[56] SOCG Paragraph 5.1.7 CD11.1
[57] CD10.6 Paragraph 6.22 – 6.23
[58] ibid paragraphs 6.25-6.26
[59] addressed at paragraphs 8.23 – 8.31 of Mr Parr's PoE (see also Chapters 10-14 of Rapley's Housing report)
[60] CD10.6 Mr Canavan Paragraph 6.57- 6.59

on the future Local Plan. The extent of the Council's housing record and minor, and most recent, only uptick (even accounting for some approvals since 2015) offers no confidence of any meaningful and sustained improvement. The future Local Plan is so distant, that even the Council invites that very little (ie no) weight be attached. Future housing delivery under a new Local Plan cannot logically be given any more weight. So, pointing to the plan-led system defies both logic and rows flatly against clear national policy emphasis for boosting housing delivery. The Local Plan, as well as Council decision-taking pursuant to it on housing proposals, has so evidently failed lamentably.

6.22 Given the Council's own position, the emerging plan can be addressed shortly. The process has been subject to continued slippage. The Regulation 18 stage, alone, spanned January 2016-June 2018. The Council contention that the Regulation 19 consultation will commence in Spring 2021, is again unrealistic, with background evidence gathering remaining ongoing.

6.23 The Council's exclamation of the Housing Infrastructure Fund (HIF), of which no detail (including of triggers or individual asset viability or asset deliverability, etc.) is before the Inspector, in merely *potentially* enabling supporting infrastructure for up to 12,000 homes, is a complete red herring in this appeal. The HIF award is ultimately part of a wider toolkit, inevitably activated only well after the new Local Plan process is completed, that would not be called upon until significantly post-plan adoption. HIF (even if anything of detail was actually known of the award) would not speed up that process at all. It also provides no justification for stalling on the imperative to boost housing supply, now. If anything, it further signposts the Council's disastrous housing position.

6.24 The Council's Spring 2020 consultation *Planning for Growth on the Hoo Peninsula*,[61] which does not even purport to assess capacity generally, or specific sites, echoes the fact. It can attract no weight. Nonetheless, the bald claim of this scale of strategic housing delivery lacks all depth. This 'vision' is also bound to face monumental opposition at Examination. The 12,000 homes figure stems from a high level assessment in the Strategic Land Availability Assessment 2019, which gives indicative figures only for Medway development. Similarly, the January 2021 issue of 'New Routes to Good Growth' HIF Project consultation,[62] presents only a very high level, road and rail investment, and fails to anticipate any detailed, physical, policy, procedural and timing delivery issues.

6.25 Moreover, whilst a Strategic Environmental Management Scheme (SEMS), identified as '*an innovative vision to capture aspirations for landscape biodiversity/access and long term management and engagement'* has been produced,[63] it provides no detail as to how it would be possible to achieve substantial development without undermining the significant international, national and local environmental constraints of the Hoo and adjacent estuary.

6.26 So, the Council's consultation exercises over recent years give no confidence that any significant level of development can be delivered on the Hoo

[61] CD6.8 Appendix 8
[62] CD1.4
[63] ibid pages 49-62

Peninsula. But the issue can be looked at as narrowly as the timing of delivery. The Council's timescale for adoption of the Local Plan is plainly over-optimistic.[64] Summer 2025 is a much more realistic date for adoption, with the necessary applications to deliver housing to follow, and then build out. This process would not therefore deliver any housing for at least five years. This is far too long to wait against the backdrop of the current chronic housing situation. The Inspector in the Brompton Farm (June 2019) appeal rightly noted *then* that '*…the housing situation needs immediate action, and it is evident timescales are progressively slipping with the Local Plan…*'[65]

6.27 The need to avoid further slippage gains even greater importance in this time of (if presently masked) unprecedented economic downturn. More than ever, development which would deliver substantial housing at an early stage with myriad, important, in/direct economic benefits is required.

Policy

6.28 There is largely agreement between the principal parties on the relevant development plan policies, and some agreement on the weight to be attached to them.[66]

6.29 Policy S1 (Strategic Development) directs development to urban areas and previously development land which is generally a sustainable approach. It does not prevent development in the countryside, as Mr Canavan notes.[67] The Council has also granted permission on greenfield sites to boost housing supply. The Council's view that this should attract full weight as it seeks to protect green land and encourage green development, falls flat against its own recognition that some District BMV land must make way for future housing. Medway cannot begin to meet its housing need without development on greenfield sites. As Policy S1 evidently restricts housing delivery, it is to be treated as out of date, and in the circumstances, should carry very limited weight.

6.30 Neither policy BNE12 nor BNE14 (Conservation Areas) directs refusal if harm to a designated heritage asset is identified. The development causes much less than substantial harm to the setting of the Conservation Areas, and this must be balanced against the public benefits of the development. It is submitted that the benefits very substantially outweigh the limited harm.

6.31 On BNE18 (Listed Buildings) it is agreed that the development would cause less than substantial harm to the setting of listed buildings. In directing refusal if there is any harm, there is conflict with the approach at paragraph 196 of the Framework, which requires a balance against public benefits. The policy is out of date and should carry limited weight. Again also, the much less than substantial harm is clearly outweighed by the benefits.

6.32 The proposition in *City & Country Bramshill Limited v Secretary of State for Housing, Communities and Local Government* [2021] EWCA Civ 320[68] is not

[64] ibid paragraph 6.54
[65] CD4.3 paragraph 73
[66] Position Statement on Policy Matters (CD11.6)
[67] CD10.6 paragraphs 6.22-6.26
[68] Paragraphs 87-89

engaged in this appeal. Neither principal party is arguing the elevation of development plan policy on heritage over the Framework on heritage. The Framework disposes of the heritage question. On the application of the Framework, the parties' common ground on less than substantial harm is agreed. The Appellant claims very substantial benefits, to be assessed in the usual way. In this context, whether BNE18 is, or is not, out of date, changes nothing.

6.33 On BNE25 (Development in the countryside), a blanket restriction on development in the countryside that restricts housing delivery is out of date and should carry no weight.

6.34 Other policies such as BNE34, which control development of valued landscapes, can carry no or little weight at best. As identified with policy S1, the Council has permitted countryside development contrary to this policy on housing supply grounds. As with Policy S1, the Council cannot sustain an objection in principle to the development proposed on the basis of protecting greenfield land.

6.35 The degree of impact on the locally designated landscape is in dispute. Whilst it is not a general restraint on housing delivery, it does restrict housing in locally valued landscape areas. The outcome of Framework paragraph 11 in the circumstances of this appeal, mean that it should carry little weight. Inspectors (Land at Station Road and Orchard Kennels)[69] have accepted protection of the 'valued local landscape' should be given weight, and have also accepted that the second criterion, which invites the balancing of economic and social benefits, must be applied. Given that these Inspectors took different views on the weight to be given to the landscape protection aims of the policy, the view observing the significance of the Council's housing position should be preferred here. The Council's own recognition of future, sizeable development on BMV land, viewed against the dire housing picture, lends further endorsement for this.

6.36 Further, any conflict with BNE34(i) is outweighed by compliance with BNE34(ii). This allows for the situation that '*the economic and social benefits are so important that they outweigh the local priority to conserve the area's landscape*.' The benefits in this case clearly outweigh the local landscape priority.

6.37 Policy BNE47 (Rural Lanes) was belatedly added by the Council. This is a local designation only, one which is highly equivocal in its application, and one which does not add any level or different protection to Policy BNE34, since the Area of Local landscape Importance (ALLI) fully encompasses it. No assessment was undertaken of Pump Lane's characteristics when designating it as important. The Lane itself has a mix of built and open frontages and this character would not be altered by the appeal scheme.[70] Even if conflict with this policy arises, which it does not, and if it is concluded that some harm does occur, it must be balanced against economic and social benefits. That conflict would pale.

[69] CDs 4.2 and 4.4
[70] ID 20

6.38 Policy T1 (Impact on development) is not consistent with Framework paragraphs 108-111.[71] It cannot be treated as up to date given that the policy only addresses (in so far as relevant to the appeal) at criterion (i), traffic capacity generated by the development. Against this factor, T1(i) does not reflect the threshold or high bar of residual, cumulative severity. Additionally, policy T1 does not even account on its face, for the consideration of residual or cumulative traffic impacts. It also does not import any obvious consideration of the wider traffic-related considerations arising under paragraph 108.

6.39 The comparatively far broader scope of Framework paragraphs 108–111 is intended to encourage, to an appropriate level, the promotion of sustainable transport modes, giving priority to pedestrian, cyclists and use of public transport (Framework paragraph 110a) and c)). It also identifies the need to plan for the needs of the less mobile (paragraph 110b)) servicing/ emergency vehicles (paragraph 110d)) and electric vehicles (paragraph 110e)). Paragraph 111 advises on travel plans. Policy T1 does not incorporate or notably reflect any of these positive elements which allow for a residual cumulative assessment of traffic impacts.

6.40 In the Appellant's view, the appeal scheme only conflicts with policies S1, heritage policies BNE12 and BNE14, and countryside policy BNE25, none of which carry significance in the overall planning balance, taking account of the outcome of paragraph 11 of the Framework for out of date 'most important policies' in this appeal.

6.41 In the 2018 Cliffe Woods Appeal,[72] the Secretary of State decided that policies S1 and BNE25 ran counter to the objective to significantly boost the supply of houses and the weight to be attached to them should be reduced. This reflected the advice of the reporting Inspector.[73]

6.42 So, the scheme is in accordance with the development plan, especially when it is understood that the policies of any development plan pull in different directions and that broad conformity (there being no need for full compliance) gives rise to accordance. As below, these conflicts are strongly offset by housing delivery and the host of other, significant benefits of the scheme.

Appeal scheme delivery

6.43 Based on realistic, not over optimistic assumptions, housing could start to be delivered on site by Summer 2023, allowing for some 250 houses (131dpa) to be delivered as part of the five year supply. Assuming the Council's more cautious delivery figure of 107 dpa,[74] some 210 homes would be delivered, 35% of which would be affordable. In cross-examination, Mr Canavan accepted that these timescales were possible and that even if they slipped significantly, would still deliver in excess of 100 houses. In any of these scenarios, a substantial contribution would be made to the five year supply.

6.44 The need to address archaeological conditions might affect the delivery of housing *if* important remains are found on further physical investigation. This

[71] ID46
[72] CD4.9 Paragraph 23
[73] Ibid paragraphs 100 and 133
[74] Mr Canavan's proof of evidence, paragraph 6.34 (CD10.6)

would have more impact on the location/distribution of houses than timing of their delivery. The Appellant is naturally keen to progress development as soon as planning permission is granted. There are no substantive issues preventing prompt delivery of housing on site, which would be well in advance of delivery through the emerging Local Plan as advocated by the Council.

LANDSCAPE

Landscape Character and Visual Context

6.45 The appeal site is strongly influenced by the urban development and urban fringe context within which it is sited. Impacts on Pump Lane are limited to those confined impacts associated with the introduction of the new junctions, and with the replanting of hedgerows along Pump Lane which does not affect the character of the central section of the Lane as it passes through the site.

6.46 The site is well contained by mature vegetation, including woodland and tall hedgerows which significantly limit the available views and extent of visibility. There are limited, publicly available views into and across the site, with some views from adjoining lanes, from Pump Lane that passes through the site and from the bridleway which runs across its eastern part.[75] Views from the Estuary shoreline to the north are screened by trees and vegetation along the Saxon Shore Way, with any views limited to those from the promontories of Horrid Hill and Motney Hill.

6.47 Views across the site from trains passing to the south are also largely screened and conspicuously filtered by trackside trees and vegetation. Outward views across the site are glimpsed through breaks in vegetation and are fleeting, with some clear views during the winter months.[76]

6.48 The land across the majority of the site is managed for commercial orchards, set within medium to large scale fields defined by tall coniferous hedges and windbreaks. Commercial orchards, even if treated as being at all characteristic of the Kent fruit belt are, nonetheless, far from a rare or unusual feature within the area and are unremarkable in their character. As Mr Hughes explained, supported by his robust LVIA, the orchards are indeed a perfectly common feature within the wider Kent Fruit Belt.

6.49 The appeal site has little variety in land use, land cover or pattern. The surrounding area includes fields of varying sizes, including both pasture and arable land with areas of remnant traditional orchards and marshland and the Medway shoreline to the north, beyond Lower Rainham Road. The variety of land uses within the immediate area is recognised in the Medway Landscape Character Assessment (MLCA) of the Lower Rainham Farmlands LCA which identifies the area as comprising *"Flat, small to medium scale mixed farmland – orchards, arable, rough grazing".*[77]

6.50 The MLCA identifies the general area between Lower Rainham and Lower Twydall as being in generally good condition, reflecting the management of the orchards and field boundaries. The commercial orchards, even if treated as a

[75] CD11.3, point 7 (page 4)
[76] ibid, point 8 (page 4)
[77] CD3.4 Page 68, Characteristics, first bullet

characteristic of the area, do not reflect the traditional historic pattern, character or varied agricultural land uses present in the landscape. The management of commercial orchards also underscores their lower biodiversity and wildlife value. This is reflected by the MLCA, in identifying the potential to restore traditional orchards and strengthen and enhance biodiversity opportunities[78].

6.51 The appeal site is situated within the urban fringe, bounded by the urban edge at Twydall to the south and contained by linear development which extends along Lower Rainham Road between Berengrave Lane and to include Lower Rainham to the north and east. Houses on the edge of Lower Rainham extend south along Pump Lane on the edges of the site, with Pump Farm, the residential development at Russett Farm and properties opposite Pump Farm towards the centre of the site.

6.52 Whilst the land use within the appeal site is predominantly agricultural, including features and characteristics that are typically rural in nature, the larger context which encompasses the site, viewed in relation to the urban area, development and also infrastructure (roads and railway) nonetheless strongly influences the context and perception of the landscape and appeal site within the urban fringe. This is recognised within the MLCA, in identifying the Lower Rainham Farmland LCA as having a "*transitional urban fringe character*" which is influenced by Lower Rainham Road.[79]

6.53 Lower Rainham Road, and development along it, extends the urban fringe influence and forms an appreciable barrier to the north of the site, separating it from the Riverside Marshes and Shoreline to the north. The urban fringe influence of Lower Rainham Road upon the local landscape is identified by the MLCA as a characteristic of the Riverside Marshes LCA,[80] which is situated to the north of Lower Rainham Road beyond the appeal site and extends as far as the shoreline of the Medway Estuary.

6.54 Given these factors, it is clear that the site forms part of a wider area that is influenced by development and is of urban fringe character, being contained by urban development and Lower Rainham Road to the north and situated adjacent to the edge of Twydall along the railway line to the south.

6.55 Assertions made in cross-examination of Mr Hughes that the LVIA, and/or his proof of evidence, lack a full appreciation of the MLCA assessment of land within the appeal site being essentially rural in character, altogether fail to acknowledge that the MLCA identifies the urban fringe character and urban influence Lower Rainham Road as characteristics of both the Lower Rainham Farmland LCA and Riverside Marshes LCA. Both the LVIA and his proof amply acknowledge the characteristics and features present within the appeal site, including the orchards, hedgerows and farmland, and the contribution these make to the landscape. This is also recognised within the intrinsic assessment of effects and is also reflected well as part of mitigation measures incorporated as part of the development.

[78] ibid Page 69, Issues, third bullet
[79] ibid Page 68 Character - second bullet
[80] ibid Page 32, Characteristics, second bullet

6.56 The influence of the urban form and containment of the site by development and vegetation is also clearly apparent in inland views from the promontories of Motney Hill and Horrid Hill. As agreed in the Landscape SoCG (LSoCG),[81] in these views, the appeal site is set beyond vegetation and trees to the shoreline, as well as development and hedgerows along Lower Rainham Road. The urban edge at Twydall forms a developed backdrop on the rising land to the south, with the urban area of Rainham and Gillingham beyond.[82]

6.57 Within the local landscape, there are commercial developments that influence the character and perception of the area as being within the urban fringe context. This is recognised in the MLCA by the classification of the area as being situated within the 'Urban fringe with urban/industrial influences' landscape type, which is described as land which is '*either significantly degraded by adjacent intrusive urban or industrial areas (sometimes characterised by an abrupt urban/rural transition) or contains features which significantly intrude upon or detract from its once rural character.*'[83]

6.58 As conveyed in Mr Etchells' proof and as described during his evidence in chief, he considered that, at the time of the assessment of the Kent Thames Gateway Landscape Assessment in 1995, Bloors Wharf was in industrial use and would have influenced the area.[84] However, the description of the area contained in the MLCA also describes the present-day context within which the site is situated, with an abrupt urban edge with Twydall to the south and the urban area on the rising land beyond strongly influencing the character of the area. Other detractors within the local landscape include industrial/commercial uses at Motney Hill, the Mariners Farm boatyard and industrial units at Owens Way, on the edge of Gillingham. As recognised by the MLCA, these urban and industrial areas intrude on the local landscape and detract from the character of the area, including the appeal site. This context can be experienced in views towards the shoreline from Horrid Hill, Motney Hill and the estuary.[85]

6.59 Whilst recognising the situation of the appeal site within the locally designated Gillingham Riverside ALLI, the LVIA assesses the site and local landscape within the Lower Rainham and Lower Twydall Fruit Belt as being of a Medium Sensitivity to the Development.

6.60 As examined through a site-specific landscape character assessment within the LVIA, the landscape alongside the estuary north of lower Rainham Road is, for a variety of reasons, of a higher value than that of the Site, and of land within the Lower Rainham and Lower Twydall Fruit Belt. It is therefore more sensitive. It is important to recognise that, as the LSoCG confirms, the development would have no direct impact upon these areas north of Lower Rainham Road, including the Country Park, protected biodiversity sites and public rights of way associated with the proposed development.[86]

6.61 Land north of Lower Rainham Road is of a higher value and sensitivity due to the recreation and amenity associated with the Riverside Country Park, Saxon

[81] CD11.3
[82] Ibid point 9 (page 4)
[83] CD3.4, page 121 (Appendix B)
[84] CD10.8 paragraph 3.4.11 (p-age 16)
[85] CD10.3 Volume 2 Figure7: Photoviewpoints 2 and 4 and CD10.8 Appendices: photographs 32, 34 and 35
[86] CD11.3 point 7 (page 7)

Shore Way, expansive attractive views across the estuary, and its wildlife/ conservation importance associated with areas of nature conservation. As the LSoCG confirms, the development would not directly impact upon these areas.

6.62 The detailed character assessment within the LVIA sub-divides the Riverside Marshes LCA into two Local Landscape Character Areas (LLCAs) so allowing for a differentiation between areas along the shoreline and farmland in respect of character, value and experiential factors, including views across the estuary. As Mr Hughes emphasised in his proof, the most significant difference between the MLCA and Tyler Grange's LVIA, relates to the *integral links* between the Riverside Marshes and Lower Rainham Farmland combining to form a *generous buffer* between the urban areas and estuary.[87] Lower Rainham Road and associated development and vegetation provide physical and visual separation between the two areas, as agreed between the Council and Appellant.[88] It is not at all clear why then land within both these areas should be provided as a buffer to protect the biodiversity or recreational resources along the shoreline. This is not explained or justified within the MLCA or under Local Plan policy BNE34 in relation the ALLI functions as a green buffer. The Council's evidence also offers no justification.

6.63 As recognised by both Mr Hughes and Mr Etchells, the containment of the appeal site limits the area from which the site, and the development proposed could be seen, and therefore also, the extent of both landscape and visual effects to the area within the visual envelope of the development.[89] This represents an area that is tightly drawn around the appeal site with restricted visibility beyond the roads and lanes bounding the site. Views from Motney Hill and Horrid Hill are identified from the north, where the land rises sufficiently for views to be obtained over the shoreline vegetation inland towards the appeal site. The landscape and visual effects of the development would therefore be localised in nature and extent.

Informing design principles

6.64 As detailed in the Design and Access Statement (DAS), the development has been informed by design principles[90], including:

- creation of a village character with village green in the centre of the site adjacent to development on Pump Lane;
- incorporation of historic orchard use within parts of structural landscaping;
- maintenance of existing landscape structure at the edges of the site with significant areas of open space around the perimeter;
- retention of existing bridleway and extend it across the western site area;[91] and
- enhancement of connectivity through creation of a pedestrian link to Lower Twydall and countryside walk around the perimeter of the site.

[87] CD10.8 paragraph 3.12 (page 17)
[88] CD11.3 point 6 (page 4)
[89] CD10.8 paragraph 3.4.18 (page 18) and Landscape Appendices – Figure 4 'Visual Envelope and Photoviewpoints'
[90] CD5.10 Section 5.0 Design Principles
[91] **INSPECTOR'S NOTE**: the plans do not show any extension of the bridleway into the western part of the site

6.65 The landscape strategy for the development as set out in the DAS, also includes the following principles, attributing a clear emphasis:

- additional landscape screening and separation for existing residential properties in addition to existing high hedges and trees;
- a structural landscape around the perimeter of the development and loop road to allow development to blend with the landscape; and
- a significant area of open space for recreation incorporating swales and ponds as part of the Sustainable Drainage Strategy.

6.66 These landscape principles are incorporated into the areas of Green and Blue Infrastructure as shown on the parameter plans[92] and illustrative masterplan.[93] An illustrative Landscape Framework plan has been prepared by Tyler Grange as part of the appeal submission to fit with the revised parameters, increasing the landscape and Green Infrastructure buffers to Lower Twydall and Lower Rainham, respecting their setting and identity as well as visual amenity of residents and providing additional landscape buffers and recreation areas.[94]

6.67 The Landscape Framework sets out landscape principles which include creation of open space and green infrastructure containing community orchards, village green, recreation routes and landscape mitigation and structure planting. As the LSoCG confirms,[95] these areas also provide improved connections for residents within the scheme and to the wider countryside including the Riverside Country Park, and Saxon Shore Way as well as to the wider urban area, in addition to Lower Rainham and Lower Twydall landscape buffers.

6.68 The development would deliver substantial new areas of publicly accessible, attractive open space, including the village green (1.12 hectares) and areas of multifunctional green and blue infrastructure (15.69 hectares). Together, these areas combine to significantly cover a third of the site area.

6.69 The strategic buffer planting and linear green spaces within the development, including trees and woodland, would break up the built form and provide a soft green backdrop to the site when viewed from the estuary. The effectiveness of that in softening views from the north is agreed in the LSoCG.[96] Character Areas (section 6 of the DAS)[97] illustrate the substantial set-backs, as well as the opportunities for effective mitigation in addition to the varied character and edge treatments, capable of delivery throughout the development.

Height Parameters

6.70 The appeal submission originally included height parameters for development of up to 12 metres in height across areas of residential development, with heights of 10 metres at the school and local centre.[98] As part of the EIA, the LVIA assessed the 12 metres height across the residential areas as a *worst-case scenario*.[99] However, as had plainly been explained in the DAS, the

[92] CD8.1 Appendix 5 Green and Blue Infrastructure Parameter Plan
[93] ibid Revised Site Masterplan
[94] CD10.3 Volume 2, Figure 8
[95] CD11.3 point 6 (page 6)
[96] Ibid point 10 (page 4)
[97] CD5.10 Section 6, Design Development
[98] CD8.1 Appendix 6 – Building Heights
[99] CD8.4 Technical Appendix 11.1a, paragraphs 2.7 and 2.8, page 4

intention had always been for individual feature and focal buildings only to be of a height of up to 12 metres (3 storeys) in height. It was never the intention, true to the DAS, for anything approaching blanket development across the appeal site to be three storeys/up to 12 metres high. Indeed, the clear majority of development would be no higher than two storeys.[100]

6.71 The Appellant's production of a revised heights parameter plan (Dg No 11047/PL/011B) so reducing the areas of heights with parameters of up to 12 metres to areas within the southern part of the site and those associated with the care home,[101] illustrates the same reality of the development, evident from the DAS. The significance of likely landscape and visual effects, and related mitigation measures arising, remains unaffected. There would arise a minor reduction in effects associated with the reduction in height parameters, given the broad categories of effect in both Mr Etchells' evidence and the LVIA, ultimately, no change would arise in the category of overall effect,[102] as confirmed by Mr Hughes in conjunction with the Appellant's note on building heights of 5 April 2021.[103] Similarly, Mr Hughes' assessment remains robust.

6.72 The lowering of heights would reduce the impact of the proposed development on views from Pump Lane at the site entrances, and as viewed from Motney Hill and Horrid Hill to the north. The mitigation planting would also be effective within a shorter time period. By retaining a parameter of up to 12 metre heights for properties fronting the village green, and in proximity to the village centre, there would continue to be important opportunities to provide focal buildings in these central spaces. Despite the localised reductions in effects resulting from the revised height parameters, these would not materially change the assessment of the residual landscape and visual effects of the development.

6.73 There also remains scope to design the appeal scheme within the amended height parameters, to ensure that the scale and character of development is appropriate to the local context, and that taller buildings of up to 12 metres in height are incorporated into the scheme sensitively to act as positive features.

Community Orchards

6.74 Following questions regarding the deliverability of the proposed community orchards, ID26 'Community Orchard Implementation and Management' was produced, detailing The Orchard Project, supportive of the community creation and management of new orchards. The 'Community Orchard Model' is used and championed by the Orchard Project. This model reflects well the feasibility of enabling residents of the development, and of the wider Rainham and Twydall area, to be actively involved in the creation and stewardship of new community orchards. A reported 95% tree survival rate across orchards established and managed by The Orchard Project, alongside communities, underscores the significance of this delivery. The focus is on community involvement and taking ownership of the orchards, whilst providing training and support for five years, aided by a co-created management plan. There is

[100] CD5.10 Section 6.5 Scale and Appearance, page 29
[101] ID29
[102] ID30 Appendix B, paragraph 3, bullet(d)
[103] ID38

flexibility in the management of the community orchards by both volunteers and management companies that would ensure the long-term orchard survival.

6.75 Areas of meadow planting amongst the community orchard areas would further improve the biodiversity of the green spaces and also encourage cross pollinating insects. As the Application Landscape Strategy Plan,[104] and the Landscape Framework Plan[105] show, it is the intention to provide areas of meadow grassland throughout areas of open space across the Development.

LVIA Assessment of Effects

LVIA Methodology and Approach

6.76 The Tyler Grange LVIA forms an independent assessment that was prepared to assess the revised appeal scheme. As recognised by Mr Etchells for the Council, the LVIA is a '*reasonably thorough and detailed assessment following a clearly stated methodology."*[106] The LVIA was prepared in accordance with the Guidelines for Landscape and Visual Impact Assessment[107] and was written by a Chartered Member of the Landscape Institute.

6.77 The photoviewpoints contained in the LVIA and which were used to inform the assessment, were agreed with Mr Etchells.[108] As reflected by the location of the viewpoints, this reinforces the containment of the appeal site and localised nature of the landscape and visual effects.[109] As agreed by Mr Etchells, impacts in views from north of the Estuary would be negligible. This is strongly reinforced by his own viewpoints[110] within the visual envelope of the proposals.[111] Clearly the focus is therefore on *localised* effects.

Landscape Effects

6.78 At the Local Landscape Character Area (LLCA) scale,[112] the development would result in residual moderate adverse landscape effects after maturation of mitigation planting.[113] This assessment reflects the loss of commercial orchards and replacement with residential development that would change the character of the landscape within the urban fringe context.[114] Effects upon the wider LLCA beyond the appeal site would be limited, due to the physical and visual containment of the site by mature planting and shelterbelts to site boundaries.

6.79 Despite the scale of the development, the containment of the site within the area of the LLCA and local landscape by woodland, trees and built development, limits the extent of the effects. The additional planting to the site boundaries and within areas of green infrastructure throughout the proposal, would bolster the containment provided by the existing trees and assimilate the development into the landscape.

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[104] CD5.10 Section 6 'Landscape Strategy' page 27 and Illustrative Landscape Masterplan, page 28
[105] Mr Hughes Volume 2 Figure 8 (CD 10.3)
[106] CD10.8 Paragraph 6.7.1, page 53
[107] CD13.5
[108] CD8.4 11.1a, paragraph 2.7, page 4 and Appendix 1and CD11.5, paragraph 13 and Table
[109] CD10.3 Volume 2, Figure 6
[110] CD10.8 Appendices Figure 2
[111] ibid Figure 4
[112] Lower Rainham and Lower Twydall Fruit Belt LLCA Mr Hughes Volume 2 Figure 5 (CD10.3)
[113] As assessed within the LVIA (CD8.4 Appendix 11.1a)
[114] CD8.3 11.1a Section 7 - Landscape Effects, Lower Rainham and Lower Twydall Fruit Belt LLCA, At Completion – Effects Incorporating Mitigation, first paragraph (page 60)

6.80 There would be no direct landscape effects on the land north of Lower Rainham Road. Minor adverse residual effects are identified by the LVIA for land within the Medway Marshes LLCA and the Medway Shoreline and Riverside Country Park LLCA. These relate to impacts on the green backdrop to the estuary and perceptual qualities as experienced from within the Country Park and views towards the Development from Motney Hill and Horrid Hill.

6.81 Upon completion, the appeal scheme would give rise to moderate/major adverse site-wide landscape effects. The landscape mitigation maturation, areas of open space including the village green, community orchards, informal open space and strategic landscape planting would integrate the development into the landscape and soften the built form, so providing additional screening of the development at the interface with adjacent bult up areas and a soft transition with the landscape to the north and northeast.

6.82 After 15 years, with the maturation of the landscape planting, the residual effects of the development at the site-wide scale would reduce to moderate adverse. The LVIA reaches this assessment on balance when considering that there would be a high magnitude of change associated with the loss of the commercial orchards across the site and a medium magnitude of change (and localised moderate adverse effect) on the character of Pump Lane arising from the implementation of new access roads, junctions and residential development. Development is set beyond areas of open space and landscape buffer including community orchards.

6.83 The substantial areas of multifunctional green and blue infrastructure throughout the proposed development would provide improved access through the site and connectivity with the adjacent urban areas and countryside, as well as areas of open space containing community orchards, a village green, informal recreation spaces and recreation routes. These include a swathe of green space alongside Pump Lane, reflecting the character of the landscape and the setting of the lane, including views of orchards and across the estuary.

6.84 As explained in ID30 regarding height parameters,[115] the LVIA uses a broad criteria threshold. The assessment of moderate adverse effects at a site-wide scale is towards a higher end of this threshold than the moderate adverse effects upon the local area.

6.85 As set-out at Appendix 2 of the LVIA[116] the magnitude of change considers the scale of the development, geographic extent and duration of effect. Whilst there would be a highly noticeable change at the site-wide scale associated with the development, the extent is localised to that of the site, reducing the overall magnitude of change within the local landscape.

6.86 When assessed against the LLCA as a whole, moderate adverse effects relate to the description contained within the LVIA,[117] '*to include the introduction of elements that are distinct but may not be substantially uncharacteristic with the surrounding landscape.'* The assessment recognises that the development is not substantially uncharacteristic and has properly taken account of the abrupt adjacent urban edge at Twydall, linear development at Lower Rainham,

[115] ID30, Notes 1 and 2 Appendix A, paragraph 3(d)
[116] CD8.4 11.1a Appendix 2 -Table 3 – Magnitude of Change: Landscape / Townscape receptors
[117] CD8.4 11.1a Appendix 2 – Table 5. Level of Significance of Effect

Pump Lane and along Lower Rainham Road and the urban fringe influence across the site.

6.87 Both the LVIA and Mr Etchells' assessment at the local area level identify residual moderate adverse landscape effects. As set out above, the extent of the area with the potential to be affected is tightly drawn around the site.[118] There is therefore only a relatively small difference between the geographic area that has been assessed for both the site-wide and local area scales.

6.88 Considering this, there appears only a small difference between the assessments of Messrs Hughes and Etchells regarding the overall significance of the landscape effects arising from the development at a localised and site-wide scale.

6.89 The Council's invitation to contrast Mr Hughes' LVIA with the assessment of landscape and visual effects as part of the Lloyd Bore LVIA submitted with the planning application, are meritless. First, it is not uncommon for a further LVIA to be undertaken at appeal stage, and no reliance is placed by the Appellant on the Lloyd Bore LVIA – there is no need. Second, there is no essential flaw in Mr Hughes' approach or disclosed by the LVIA, or as to mean that the Lloyd Bore LVIA bears any relative importance in the appeal. Third, as explained in Mr Etchells' evidence,[119] the residual landscape effects at the local area scale have nonetheless been assessed as 'moderate adverse' at year 15, by three independent assessments:

a) Lloyd Bore LVIA (planning application);

b) Tyler Grange LVIA (appeal scheme);

c) Mr Etchells (Council).

6.90 As recognised by the GLVIA, professional judgment is an important part of the LVIA process, and even with qualified and experienced professionals, there can be differences in the judgments made.[120] Despite this, it is clear that the three different LVIAs prepared to assess the development scheme broadly agree the significance of effects on the local landscape. This is reflected in Mr Etchells' comments on the Lloyd Bore LVIA assessment within the officer report, that moderate adverse effects at a local level is a "*reasonable assessment of the likely landscape harm*".[121]

6.91 The narrative and explanation behind the assessment is of key importance.[122] In accordance with guidance, the LVIA contains narrative setting out and explaining the assessment and the judgments made. Mr Etchells considered the Lloyd Bore LVIA to make a '*reasonable assessment of harm to landscape character,'* with residual moderate adverse landscape effects after 15 years at the LCA scale (as referenced in application proposal in the Officer's Report). This reflects the Medway LCA (2011) Lower Rainham Farmland landscape character area.

[118] As identified CD10.8 Appendices Figure 4 'Visual Envelope and Photograph Viewpoints'
[119] CD1.8 Appendices, Table 1 – Summary Comparison of Landscape Effects
[120] CD3.15 paragraph 2.25 (page 21)
[121] CD7.2 paragraph 3.54, page 15
[122] CD3.15 paragraph 3.36

Visual Effects

6.92 Given the limited extent of views towards the appeal site and the development proposed, effects on publicly accessible views and visual amenity are largely limited to those obtained from adjacent roads, including Pump Lane as it passes through the site, as well as middle distance (500m-1km) views obtained from Motney Hill and Horrid Hill, to the north.

6.93 The development would be screened by intervening vegetation in low-lying views from along the shoreline, with shelterbelts, woodland and tall hedgerows limiting views into or across the site from adjacent land beyond the lanes and properties at Lower Twydall and Twydall.

6.94 Views from Motney Hill and Horrid Hill are expansive and include views across the Estuary and wider shoreline. The situation of residential development on the site, set within the well vegetated and treed backdrop, along with mature mitigation planting to the site boundaries limit the extent and prominence of the development and resulting magnitude of change.

6.95 The development would be contained by existing and mitigation tree planting, providing a soft edge, retaining a green backdrop set beyond the woodland and shelterbelts, tying-in with the woodland and trees that bound the site and are situated within adjacent areas. Development on the rising land to the south and along Lower Rainham Road would continue to frame views towards the appeal site, with the urban form of Twydall on the rising land, to the south. The expansive views from these locations across the estuary would not be affected. Views and the visual amenity of people visiting Horrid Hill and on the Saxon Shore Way at Motney Hill would result in residual localised, minor adverse visual effects.

6.96 Users of local roads including Lower Rainham Road, Lower Twydall Lane and Lower Bloors Lane, would experience residual localised and minor adverse visual effects. The containment of the proposals within the strong network of boundary vegetation formed by existing trees and hedgerows would be strengthened by new planting which would, over time, mature to soften and screen views, including views at the site entrance, off Lower Rainham Road. Views to the north from the road would remain unaltered, with replacement native hedgerows and trees to the landscape buffer and the setting-back of development beyond generous landscape buffers providing a robust edge and transition from the road to the development.

6.97 The areas of green infrastructure alongside Pump Lane would provide improved pedestrian access across the appeal site north-south, within areas free from vehicular traffic and passing through attractive areas of public open space that connect with wider recreational routes within the scheme and surrounding countryside. There would no longer be a need for people to walk along the lane, which is narrow and has no footways to access the countryside beyond the urban areas. For those users of the lane, there would be localised minor/moderate adverse effects upon their visual amenity resulting from the realignment and new junction arrangements to the north and south of the lane and views of the Development. Retaining open space alongside Pump Lane, including community orchards and the village green, would maintain the character of the central section and minimise visual impacts.

Users of the Bridleway

6.98 Users of the bridleway would benefit from improved accessibility and connections with adjacent rights of way that are to be provided within the scheme, including a new footway from lower Twydall Lane. This would join with proposed footpaths and routes that run through areas of green infrastructure, and the bridleway, providing links with Berengrave Lane as the bridleway continues through the Bloors Lane Community Woodland and the new housing currently under construction on the former Nursery site.

6.99 The bridleway is set within a green corridor, with existing trees alongside the path to be retained and managed. Access from the bridleway to areas of open space along the route, including wider recreational walks around the scheme set within a variety of green spaces, allows for greater amenity uses, with opportunities to retain glimpsed views towards the Estuary from existing gateways, and the provision of a park providing informal recreational space, structural native landscape planting and play areas. The bridleway would open up into the village green, providing a destination and attractive environment for residents and the wider local community for recreation and amenity use.

Pump Lane Character and Hedgerow Removal

6.100 Despite not being cited in support of a reason for refusal, the Council belatedly introduced policy BNE47 'Rural Lanes' in relation to Pump Lane. The policy does not identify or attribute any importance, or explain any landscape or amenity character of individual lanes, still less of Pump Lane. There is similarly no supporting study or base evidence, from which to discern any valued 'attribute' of Pump Lane, or assess such against the policy itself, or as to assist in understanding any attribute the Lane may be said to have in any appreciable context, including within the context of other lanes. It is even unclear whether the Lane in whole or in part (or parts) is said to disclose significance. The Council was seemingly unable to resolve these ambiguities when deciding to omit this policy from its reason for refusal. It clearly provides no, or no material support for the reason for refusal.

6.101 Nonetheless, policy BNE47 aside, Pump Lane discloses a distinctly varied character as it passes through the appeal site, with properties fronting the road south of Lower Rainham Road and at Russett Farm/Pump Farm introducing a developed character. The hedgerows also include uncharacteristic conifers, with gaps and breaks reflecting their limited species and age structure. The Lane is also well used by local traffic and is further influenced by trains using the railway line towards the south of the site. This all very significantly reduces the landscape character and amenity of the Lane.

6.102 Indicative hedgerow removal and replanting associated with the site accesses on Pump Lane and Lower Rainham Road, has been explained, demonstrating how replacement hedgerows may easily come forward and compliment the Landscape Framework, connecting appropriately with retained roadside hedges.[123]

[123] ID4

6.103 The development includes the replanting of removed lengths of hedgerow and provision of landscape buffers, incorporating new trees. It is also common ground that the replanting could be undertaken early during the construction phase to allow for establishment and maturation to reflect existing height during construction.[124] As must be widely acknowledged (including by Mr Etchells) this replanting would offer valuable opportunities for improving the species, structure and management of the hedge. As well as reinforcing character, there would be clear biodiversity and wildlife benefits associated with more diverse native hedgerows.

6.104 As Mr Etchells also confirmed[125] that there would be no change to the character of Pump Lane, between the northern and southern access points, with changes to the character of the Lane being limited to those associated with the new junctions. Community orchards, betraying a traditional character, and the proposed village green, would provide an attractive character alongside the road, preserving the setting to Russett Farm and Pump Farm, and views across the orchards towards the estuary.

6.105 Further alteration of the alignment of the proposed access on Lower Rainham Road has enabled the retention of the road alignment along the northern edge, retaining the footway, hedgerows and trees to the north of the road.[126] The revisions also allow for the replanting of hedgerow early during the construction phase and additional trees and landscape planting within the landscape buffer.[127] This planting would provide a robust landscaped edge along Lower Rainham Road.

6.106 The details of indicative hedgerow removal and replanting set within the Landscape Framework also does not alter the findings of the Tyler Grange LVIA in respect of the impacts on the character of Pump Lane, assessed as localised and moderate adverse. The assessment has taken account of the new junctions and associated breaks in the hedgerow and replanting, and access roads with views into the Site and residential development at these points, as shown on the Landscape Framework Plan[128].

Gillingham Riverside ALLI

6.107 The ALLI is a non-statutory, local designation which provides protection at District level. The value attributed to these landscapes is therefore of local importance only. In addition to protection of the landscape, ALLIs are also designated for functions that do not relate to the character or quality of the landscape. These functions include as buffers, separation between settlements, wildlife corridors and for recreation and access.

Application of Policy

6.108 The ALLI is plainly not a restrictive policy,[129] still less has it been applied in this manner over recent years - a point which the Council well understands. Since

[124] ID11.3, point 12 (page 5)
[125] CD10.8, paragraph 6.4.1 (g), page 50 , stating that: *'The central part of the lane would not change physically"* and in XX
[126] ID20, paragraphs 2.1 – 2.6 and DTA drawing 2030-05-2F 'Lower Rainham Road Proposed Right Turn Lane'
[127] ID20, Tyler Grange drawing 13374/P17a 'Lower Rainham Road'
[128] ID10.3, page 62 'At Completion' 5th paragraph and page 63 'Residual Effects' Pump Lane
[129] CD10.3, paragraph 2.17 (page 13)

2015 there has been a clear and consistent trend of approving development, including a total of 589 dwellings within the Gillingham Riverside ALLI north of Twydall and Rainham.[130] This includes development that would extend the urban area of Rainham north, to Lower Rainham Road. Consented development on the former Berengrave Nursery site is under construction, adjacent to the railway line, east of the Community Woodland.[131] That scheme includes extending development to cover horticultural/greenfield land north of the former glasshouses,[132] incorporating the public right of way connecting Berengrave Lane with Lower Bloors Lane.

6.109 The ALLI does not attract increased significance by virtue of these approvals. It logically cannot. Similarly, ALLI functions, including buffer and settlement separation are not enhanced by these approvals. The opposite is true. Plainly, the significance of the buffer function etc, is shown to be limited in terms of local importance. Moreover, it is not as if approving the development could be treated as suddenly undermining this function, or materially so, where other approved development has not.

6.110 As explained by Mr Hughes,[133] ALLIs cover large areas of land within Medway District, limiting the availability of land adjacent to the main settlements not covered by the ALLI designation and which are in sustainable locations.

Functions of the Appeal site as a Green Buffer in the ALLI

6.111 A detailed and carefully considered assessment of the contribution that the Local Landscape Areas make to the character and functions of the ALLI is provided in the Tyler Grange LVIA.[134] This informs an assessment of the value of the area, and provides consideration of the contribution of the appeal site to the functions of the ALLI and of the impacts the development upon these.

6.112 As agreed in the LSoCG, the function of the ALLI as a green buffer does not relate to the quality of the landscape. It separates built up areas from the areas of importance for nature conservation and recreation that are situated along the Medway Estuary[135] - something not offended by the development. There would remain more than adequate separation. Within this context, there is notably also no quantitative feature of this policy prescribing any extent of physical separation, as a depth or width sufficient to fulfil this function.[136]

6.113 It is also common ground that the development would have no direct impacts upon the land north of Lower Rainham Road, including the Country Park, protected biodiversity sites and public rights of way.[137] The function of the Riverside Marshes LCA as a green buffer between Lower Rainham Road and the shore would not be affected.

[130] Mr Etchells evidence Volume 2 Figure 3
[131] Illustrated on CD10.3, Volume 2, Figure 3 'Planning Policy and Consented Development within the ALLI.
[132] ID3 Aerial photo sequence (2003 – 2020)
[133] CD10.3, paragraphs 2.31 – 2.33 (page 15)
[134] CD8.4 - 11.1a, Section 4
[135] CD11.3, point 1 (page 6)
[136] CD10.3, paragraph 2.23 (page 14)
[137] CD11.3, point 7 (page 7)

6.114 Land north of Lower Rainham Road makes a high contribution to the function of the ALLI as a green buffer, situated on the edges of the Medway Estuary and Marshes SSSI, Ramsar Site and SPA. The Saxon Shore Way runs along the seawall and the Riverside Country Park occupies land north of the road. Belts of trees and vegetation along the shoreline provide physical and visual separation from the marshes to the south and also provide a substantial part of the green backdrop in views from the estuary, which is identified as a function of the Gillingham Riverside ALLI.[138]

6.115 Land within the Riverside Marshes LCA and Medway Marshes Farmland LLCA (as defined by the Tyler Grange LVIA)[139] separates the shoreline from Lower Rainham Road and serves as a green buffer with the shoreline.

6.116 The Medway LCA identifies the Riverside Marshes LCA[140] as having long views and an open character in views to the estuary, lending a stronger sense of enclosure to the interior and serving to protect the Natura 2000/Ramsar site and provide a valuable recreational and biodiversity resource and green corridor. As is common ground also,[141] Lower Rainham Road and associated linear development, mature hedgerows and trees combine to provide physical and visual separation between the appeal site and Riverside Marshes and shoreline to the north.

6.117 The development would be contained south of lower Rainham Road and would not extend beyond the built edge and linear development. Consented developments within the Gillingham Riverside ALLI on Station Road and Lower Rainham Road extend the northern edge of Rainham up to Lower Rainham Road, albeit whilst retaining the land north of the road as a green buffer to the shoreline and estuary.[142]

6.118 Whilst the proposed development would reduce the degree of separation with the edge of Twydall and inevitably impact upon the physical extent of the green buffer, it would offer enhancements to the functionality of the site in terms of accessibility between the urban area of Twydall, wider rights of way network and Riverside Country Park. This benefit of the development is agreed by the Council.[143] It also acknowledges that this would come through areas of green infrastructure incorporating community orchards, a village green and areas of public open space set within green corridors and landscape buffers.

6.119 The swathe of green space running through the heart of the proposal, alongside Pump Lane, would retain the function of the appeal site as part of an accessible and functional green buffer. As illustrated on the Landscape Framework, landscape buffers to the site boundaries, public open space, school playing fields and care home ground provide separation with Lower Rainham.[144]

[138] CD10.3, paragraph 6.7 (page 450 and CD10.3 Volume 2, Photo viewpoints 2 and 4.
[139] Illustrated on CD10.3 Volume 2 Figures 4 and 5.
[140] C D3.4, pages 32 – 33 (5 Riverside Marshes Landscape Character Area)
[141] CD11.3, paragraph 2.2, point 6 (page 4)
[142] Illustrated on CD10.3, Volume 2 Figure 3
[143] CD11.3, Point 6 (page 6)
[144] MR Hughes Volume 2 Figure 8 Landscape Framework Plan

Other ALLI Functions

Providing residents within an extensive urban area access to an attractive, rural landscape

6.120 Dedicated public access across the appeal site is, at present, limited to the bridleway, offering only limited recreational or visual amenity opportunity. Pump Lane has no footway and there are also no connections or destinations at the western end of the bridleway. As recognised by the Medway LCA, there is poor connectivity between the edge of Twydall and the shoreline and Riverside Country Park, to the north. Guidelines include for improving these footpath links.[145]

6.121 The appeal scheme would provide much improved accessibility and recreation walks within areas of green infrastructure connecting Twydall with Lower Rainham Road and the Riverside Country Park, coinciding with improved connectivity and openness in overall recreational experience.

Green Backdrop When Viewed from the Medway Estuary

6.122 As is also agreed in the LSoCG, the proposed tree belts and landscape buffer planting to site boundaries and within areas of green infrastructure, would mature to break up and soften the proposal.[146] This would reinforce and enhance the wooded backdrop formed by shelterbelts and Lower Bloors Community Woodland.

HERITAGE

6.123 At its highest, and with regard to few individual assets only, any harm to the significance of the heritage assets is clearly less than substantial *and* at the lowermost end of the spectrum (or lower end, with regard to other assets). Further, when cumulatively viewed, the harm is plainly unobjectionable in national policy terms. Viewed overall, when performing the internal heritage balance, the modest harm caused to heritage assets is very strongly outweighed by the benefits of the appeal scheme. This is not a marginal case.

6.124 It is no surprise that designated heritage assets are present within the vicinity of the site, like in so many cases involving sizeable development. In this appeal however, the proximity of such assets does not engender any large contribution to the heritage significance of assets to the site. Rather, it is the experience of these assets that is the focus of consideration.

6.125 Immediately notable is that no heritage assets have clear, designed views over the site. What intervisibility there is (which is notably limited) being incidental, largely screened, and beyond greatly changed areas or to areas of changed character. There is also no indication that the surrounds of any of the assets was laid out in order to facilitate views out, in the direction of the site. One clear example of this is Bloors Place, where views in the direction of the appeal site from the rear of the building, and its immediate vicinity, are purposefully enclosed at ground level by high garden walls, which are themselves of some age, and are listed.

[145] CD3.4 page 68 – Characteristics, 5th bullet and page 69 Guidelines, 2nd bullet
[146] CD11.3, point 10 (page 4)

6.126 Whilst significance is, of course, not limited to issues of intervisibility notably, with regards to economic and social connections, not only have the ownership and functional connections that once might have been present between assets and the site, now plainly been severed but also, where such a connection was ever present, the character of both the asset and the appeal site has changed greatly. Any such connection therefore has considerably reduced, if not been removed altogether. No appreciable historic illustrative relationship exists. Clear examples of this include the residential and commercial character of the now sub-divided Bloor Place complex, the wholly residential character of Lower Twydall (where no farms are now present) and the change in character of the site to modern, commercial orchard.

6.127 It is with surprise that acknowledging the unarguable change, over time, of the economic and social aspects of assets, and the resultant change in their experience, has featured as a key difference between the approach and evidence of Ms Stoten and Ms Wedd. Ms Stoten's assessment should plainly be preferred. Strikingly but indicatively, Ms Wedd did not include any consideration of the enclosure of the curtilage of Bloor Place in her evidence, or separately, the subdivision of the complex and the conversion of the outbuildings.

6.128 Another key difference has been the approach taken to the scale of less than substantial harm. Ms Stoten carefully explained how she considered that the uppermost end of that scale is defined by substantial harm, being described in the *Nuon*[147] judgment to be: '*…harm that would 'have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced…*'. Indeed this is agreed common ground,[148] with the less than substantial harm scale running from negligible harm up to just short of substantial harm. In contrast, Ms Wedd's apparent approach has employed a separate scale for physical harm and harm through setting, an approach which is clearly incorrect.

Asset by Asset approach

6.129 Another major difference in approach, and evidence, between the heritage witnesses was the asset by asset approach taken by Ms Stoten - wrongly rejected by Ms Wedd. In the first part of the related round table session at eh Inquiry, Ms Stoten logically explained why hers was the correct approach. Paragraphs 189 and 194 of the Framework are clear that harm to a heritage asset results from an impact on, or loss of, its significance. In order to understand the scale of any harm or loss, one must first understand:

- all of the significance of the asset, derived from both fabric and setting;
- all of the setting of the asset;
- the relative contribution of the subject site to the significance of the asset; and,
- what harm, if any, would be caused by change to the subject site.

[147] *Bedford Borough Council v Secretary of State for Communities and Local Government, Nuon UK Limited* [2013] EWHC 2847
[148] CD11.2 paragraph 3.17

6.130 The above strongly reinforces the basic need for a true understanding of the significance of the asset, in order to fully understand how change may affect its significance. This is entirely in conformity with Historic England's Guidance on Statements of Significance and is precisely the staged approach that Ms Stoten followed in her evidence. Contrastingly, and critically, Ms Wedd merely explored how the site contributes, in her view, to the significance of each asset, but did not consider all of the significance and the setting of each asset.

Contribution of setting to the heritage significance and/or ability to appreciate the significance of the following assets, and the effect of the development on that significance:

York Farmhouse (GII):

6.131 The significance of York Farmhouse is primarily derived from its fabric as an early 16th Century farmhouse, with later additions. It has experienced a large degree of change, being converted to three residences and in wholly domestic use, and with newly-built residences in close proximity in its former yard areas. This has physically separated the asset from the wider landscape, beyond multiple layers of domestic curtilage,[149] and the cessation of the complex for farming uses has severed the functional association. Reference to historic documents[150] demonstrates that its landholding was dispersed historically – it never sat in the centre of a consolidated landholding that might be legible from its proximity to the asset.

6.132 As such, those elements of its setting that contribute to its heritage significance comprise the garden plots of the former farmhouse, the formerly associated outbuildings which are now converted, and views to the asset from Lower Twydall Lane, from where it can be understood as part of the Lower Tywdall settlement.

6.133 The appeal site has only minimal intervisibilty with the upper elements of the asset.[151] The site and the asset are not readily experienced together. There are no accessible routes between the two that are not circuitous. The site does not contribute to the heritage significance of the asset, through setting.

6.134 The appeal scheme would be set back from the asset, beyond its gardens, further gardens, a strongly vegetated boundary and public open space. No harm to the heritage significance of York Farmhouse through changes in setting may sensibly be anticipated.

6.135 In the related discussion at the Inquiry, Ms Wedd suggested that York Farmhouse could be clearly seen from the footbridge over the railway to the south, and also that Pump Farmhouse was visible in this view. As seen during the site visit, these views are not possible due to intervening vegetation and the buildings of Russet Farm. Ms Wedd also suggested that the view from the footbridge gave a sense of isolation, yet the modern settlement at Rainham, visible in close proximity in the other direction, unarguably precludes this.

6.136 It was also asserted that when the farmhouse was part of a farm, it would have had direct access to the fields, so suggesting this engendered a

[149] Ms Stoten PoE, Plate 4, page 13
[150] ibid Plate 2, page 12 Tithe survey
[151] ibid Plates 5 and 6, pages 14 and 15

connection today. However, this simply demonstrates how the change in ownership and use and resulting changes to the curtilage has considerably altered how the asset relates to the wider area. Any such routes present historically, are now blocked by the layers of domestic curtilage plainly present in the vicinity of the farmhouse.

Pump Farmhouse (GII):

6.137 Again, the significance of this asset is primarily derived from its physical form, with setting making a markedly lesser contribution. Similarly, this asset and its setting have experienced an obvious and large degree of change. It is now used for solely domestic purposes, and a large and dense development of 24 residences has been constructed adjacent to it, to the north and west (Russett Farm) an outbuilding has been rebuilt as a residence to its south, and a large modern outbuilding associated with the orchard use, and the access route to it, lie to the north and east.[152] These changes have clearly resulted in the functional and, to a large degree, visual separation, of the asset from the wider landscape.

6.138 The areas of adjacent former landholding, which was of mixed character historically, are not readily visible from the asset. There is some intervisibility between the asset and the modern commercial orchard, from a side elevation,[153] to an area that was not historically associated with the farmhouse.[154] The expanded garden of the farmhouse, and the vegetation within it, prevent views to the wider landscape to the south from the primary south-facing façade.

6.139 The element of setting that makes the greatest contribution to its significance, is its garden plot, from where its architectural interest is likely to be best experienced and understood. This area has been expanded from the narrow plot, originally only present to the south-east of the asset, to encompass land on all sides of the dwelling.[155]

6.140 The modern orchard within the appeal site makes no more than a minor contribution to the heritage significance of the asset through setting. The same goes for historic illustrative interest (although this contribution is in any event minor, as the functional association has been severed). The modern houses conspicuously screen views to a significant proportion of the land that was historically associated, and further still, the land that is most visible from the building to the east was mostly not historically associated with the asset.

6.141 The development would be visible in views east from the asset, from its side elevation, although it would be set back behind open space and orchard. The appeal scheme would in fact be sited much further from the asset than the existing Russet Farm development, which is 15 metres away it its closest point. The development would neither harm the fabric of the asset, from where it derives most of its significance, nor the gardens of the asset, from where it is best appreciated. The development would result in less than substantial harm at the low end of the spectrum for this asset.

[152] ibid, Plate 13, p24
[153] ibid, plate 17, p27
[154] ibid, plate 10, p22
[155] ibid, plates 12 and 13, p23-4

6.142 Ms Wedd was of the view that the farmhouse was of unusually 'polite' design – but, ultimately, it is not disputed that this treatment was given to the primary façade of the residence, rather than the elevation that has some intervisibilty with the appeal site. The primary facade faced the road and was likely to have been visible from it when the dwelling was first constructed. Demonstrably, the focus of the architectural endeavours of the asset were focussed on the façade that does not have intervisibilty with the site.

6.143 She also asserted that the harm to this asset would be less than substantial and at the middle of that range. This is however untenable given that the asset and the elements of its setting from which most of its significance is derived would be unharmed by the development proposed.

Chapel House (GII):

6.144 The heritage significance of Chapel House is again primarily derived from its fabric, with setting making a lesser contribution. Again, change is strongly evident in the building itself and its setting. The functional association with the wider landscape has been severed, and the building is now two private residences. These residences face directly onto Pump Lane, from where the asset can be best appreciated, and up to where the settlement of Lower Rainham reaches. The asset has gardens or other curtilage on other sides.

6.145 Those elements of its setting that contribute to the significance of Chapel House include the curtilage plots and Pump Lane, from where the architectural interest of the asset can be best appreciated, and the settlement of Lower Rainham. The immediately adjacent agricultural land, with which it has partial intervisibility and which was part of the asset's historic landholding, is considered to make a contribution to the asset, albeit the functional association between the asset and the wider landscape has ceased, and the character of the landscape has changed to modern commercial orchard.

6.146 The asset has filtered intervisibility with the appeal site from the rear and sides of the structure. Albeit this makes a contribution to the heritage significance of the asset, this is minor only, since the functional association has been severed, the intervisibility is filtered, and the building was clearly designed to face in the other direction onto Pump Lane.

6.147 Notably, the appeal scheme would be set back from the rear of the asset. The fabric of the structure, from where it gains most significance, would not be harmed, nor would the gardens that it lies within, nor its relationship with Pump Lane. The change of character of the site from modern orchard to development beyond orchard, would result in less than substantial harm at the low end of the spectrum to this asset.

6.148 Ms Wedd raised the potential impact of the road junction to the north on Chapel House, but this is an asset that is sited in close proximity to an existing road junction,[156] which forms part of its existing setting.

497-501 Lower Rainham Road (GII) and The Old House (GII)

6.149 It is common ground between the witnesses that no harm would occur to the heritage significance of either of these assets.

[156] ibid plate 18, p32

Bloors Place (GII), outbuildings (GII) and garden walls (GII) Bloors Oasts (Non-Designated Heritage Asset)*

6.150 The Bloors Place complex, the residence of which is Grade II* listed, was subdivided during the later 20th or 21st century, with the Wagon House, Cartlodge and Oasts now forming separate residences, with a roofing company also operating from the complex.

6.151 The house lies within its gardens, some of which are surrounded by high walls, which gives the house and its immediate curtilage a secluded immediate setting, in clear contrast to high status residences that have designed views out over the wider landscape. It has been functionally severed from much of its former landholding, which was of a large and dispersed nature, historically encompassing several land uses and functions.[157]

6.152 The appeal site encompasses part of the former landholding, albeit of much changed character of modern commercial orchard. There is virtually no intervisibility with the house in the summer, and only filtered intervisibility with its upper levels in the winter.[158] The filtered views to the site are beyond its gardens and orchard (the community orchard beyond the site) beyond that.

6.153 It is plain that the significance of the asset is primarily derived from its built form, with setting making a lesser contribution. Those elements of the setting that contribute to its significance include its immediate curtilage, including the outbuildings and structures which give legibility to the phase of its history when the complex was used for mixed farming, as well as the gardens and settlement of Lower Rainham.

6.154 The appeal site, as part of the former landholding with which the asset has filtered intervisibility in winter, also makes a contribution to the heritage significance of Bloors Place through setting, but this is very minor given that views of the site are heavily filtered and the functional connection has been severed. The site is now modern commercial orchard, and the surrounds of the asset have been laid out to enclose, rather than facilitate, views.

6.155 The development scheme would be set back from Bloors Place, beyond its gardens enclosed by high walls, and the community orchard beyond, outside the site. It would cause less than substantial harm, and at the lowermost end of the spectrum, to Bloor Place.

6.156 With regards to the Grade II Listed outbuildings at Bloors Place, these have no intervisibility with the appeal site, and have now been converted to separate residences. As such, they have neither a current functional nor a visual relationship with the site, and change to character within the site would cause no harm to their heritage significance.

6.157 The Grade II listed walls at Bloors Place have filtered intervisibility with the appeal site. However, they were designed to seclude the gardens. As such, they were neither designed to be visible from the wider landscape nor offer outwards views. Their setting comprises Bloors Place and its gardens. Change within the appeal site would cause no harm to their heritage significance.

[157] ibid paragraph 6.135, plate 28, page 47
[158] Ibid proof plates 29-32, panes 48-9

6.158 The Oast House south of Bloors Place is considered to be a non-designated heritage asset by both parties. This has also been converted to residential use and no longer has a functional association with the wider landscape. The elements of its setting that make the greatest contribution to its significance, are its immediate curtilage, from where its architectural interest can best be appreciated, and the other buildings of the former Bloors Place group, which have historic interest as they are illustrative of the origins of the Oast House as part of the wider complex. At most, the appeal site makes a modest contribution to the asset, as there are currently some filtered views to the asset across the site. That said, whilst the development proposed has the potential to block some views to the asset, it also has the potential to open up new views to it from publicly accessible areas. Any harm to the heritage significance of the asset would be very minor at most.

Lower Rainham Conservation Area:

6.159 With both the Conservation Areas, Lower Rainham and Lower Twydall, consideration of the historic development of the areas is critical to understanding the contribution that their setting makes to their significance, given that this has affected the relationship of the structures and spaces within the areas, with the wider landscape.

6.160 The historic development of the buildings and spaces in the Lower Rainham Conservation Area has been carefully considered. The functional relationship with the wider agricultural land has largely been severed. Of the few larger agricultural complexes that were present historically, Bloors Place has been subdivided by residential conversion and no longer has any functional association with the wider area. A couple of the other smaller complexes have had the once-present agricultural buildings demolished.

6.161 The settlement appears to have been sited to take advantage of a wider economic base for this locality, with the largest historic landholding of Bloors Place including a wharf, saltmarsh, woodland, meadow, orchard and arable in the mid-19th century.

6.162 The Conservation Area has a stronger visual link with the River Medway and adjacent land than land to the southwest, which is largely screened by strongly vegetated boundaries and now has a ubiquitous modern commercial orchard character.

6.163 As above, the development would have some intervisibility with Chapel House and Bloors Place which lie within the Conservation Area, but would be largely screened from historic buildings in the core which front onto Lower Rainham Road. The experience of the Conservation Area from Lower Rainham Road, from where both parties agreed that the historic character of the area was appreciated from, would be largely unchanged. The development has been designed to avoid coalescence. The change to some of the wider agricultural surrounds of the area is anticipated to result in less than substantial harm, and at the lowermost end of the spectrum, to the Lower Rainham Conservation Area. Its character and appearance would be preserved.

Lower Twydall Conservation Area

6.164 The historic development of the Lower Twydall Conservation Area has been considered. It is evident that the large degree of change to the function of the

buildings within it has affected the relationship of the Conservation Area with the wider landscape. Whilst many of the buildings of heritage significance once had agricultural origins, these have all since been residentially converted, with no remaining active farm complexes remaining. The historic buildings are now separated from the wider landscape by domestic gardens, sometimes forming a double layer of curtilages.[159] The lack of functional connection has also resulted in the absence of any ready access between the appeal site and the Conservation Area.

6.165 The site has only glimpsed visibility with some elements of buildings within the Conservation Area and their plots, albeit that the buildings are of changed character from their historic uses, with the site lying beyond garden plots of modern origin.

6.166 The proposed residential development on the appeal site would be set back from the edge of the Conservation Area. Only less than substantial harm, and at the lowermost end of the spectrum, would be caused to this asset.

Historic landscape:

6.167 A convenient starting point is the Inspector's question over whether the historic landscape was recorded on the Kent Historic Environments Record. Ms Stoten confirmed that there were no discrete entries relating to any historic landscape features within the appeal site.

6.168 The site is covered by the Kent Historic Landscape Characterisation, but this covers the entirety of the county, dividing it into character polygons. There is no coherent basis then for suggesting that this characterisation within this study confers heritage asset status to any particular area, still less to the area conceived by Ms Wedd for this appeal. This is the first time that conception has been advanced and has been done so for the purposes of this appeal.

6.169 Without reference to the Kent Historic Landscape Characterisation Study, Ms Wedd identified the 'historic landscape' within the appeal site as a heritage asset, asserting the following sequence:[160]

> *Estuarine mudflats and saltmarsh crossed by Bloors Wharf Road; the name derives from the historic connection with the listed buildings at Bloors Place*
>
> *Lower Rainham, built on the first solid geology that could carry buildings and the coastal road to Chatham*
>
> *The undeveloped open farmland of the site, with widely dispersed farmsteads and the hamlet of Lower Twydall*
>
> *The railway line and embankment, a Victorian intervention in the landscape that has provided a physical and psychological barrier to development*
>
> *Suburban residential development south of the railway.*

6.170 Her proof references the land within the appeal site as '*the last remaining piece of undeveloped open farmland in the sequence of historic landscape*

[159] ibid, plate 33, p58
[160] Ms Wedd PoE, paragraph 5.17, page 12

types.'[161] A central flaw in this misconceived analysis is that if the last element is removed ('suburban residential development south of the railway') – which is of no interest – the sequence of estuarine flats and saltmarsh, then settlement, farmland (with farmsteads) and railway is in fact, extremely common for north Kent. This can be readily seen through reference to modern aerial photographs. The backstop of 1960s suburban development does not engender any significance to the area sufficient to make it a heritage asset.

6.171 Another significant flaw in this approach is the identifying of the landscape only within the appeal site as a heritage asset. This is firmly contrary to how heritage assets should be defined. They should be defined along boundaries that relate to their intrinsic significance, not to areas of proposed change. When challenged on this critical point by the Inspector, Ms Wedd changed her case and proceeded to define the area that she considered the historic landscape to comprise as broadly relating to the site but, inconsistently with her own analysis, defined by features *beyond* its limits. Ms Wedd's case then changed again in response to further discussion, expanding the boundaries of the asserted 'asset' further to include a slightly larger area again.

6.172 Taking any of the three 'asset' areas proposed by Ms Wedd, their character has, nonetheless, significantly changed from a mixed farming and orchard base to modern commercial orchard. The pattern of small-scale settlement within this landscape is unremarkable and entirely indistinguishable from very many locations, nationwide. There is absolutely nothing about the landscape within the appeal site that would justify its consideration as a heritage asset.

6.173 The Inspector sought views on the difference between analysis of setting and landscape assessment. Setting focusses on the heritage significance of the asset, which is the key consideration in the policy tests of the Framework, and how areas of landscape might contribute to this significance. It is informed by a detailed understanding of the significance of each asset. Historic Landscape Character Analysis is not a tool for assessing significance, but rather is a broad-brush characterisation process, which seeks to divide an entire area (here, the County of Kent) into character polygons on the basis of land use.

6.174 In order to inform the key policy tests, a detailed asset-by-asset assessment of setting should be undertaken, rather than seeking to find heritage significance in an arbitrarily-defined area between assets, and attempting to define this as an asset in and of itself.

6.175 Yet, even if the landscape were considered to be a heritage asset, identifying the appeal site (or correlating areas close to it) as an asset simply artificially inflates harm, not least because proposed development would inevitably result in a large degree of change within its own red line area.

Cumulative Harm

6.176 Ms Stoten explained why an 'asset by asset' approach is correct. In order to assess relative loss of significance, if it does occur, the whole of the significance of each asset must be understood. This cannot be rigorously achieved by considering them together.

[161] ibid, paragraph 5.25, on page 13

6.177 Ms Wedd's rejection of the 'asset by asset' approach is deeply unconvincing, resulting in the flawed contention that a two-stage process must be employed for considering harm, first identifying levels of harm relating to individual assets,[162] then inflating it as a collective 'cumulative assessment'.[163] There is no support found in guidance for that approach.

6.178 Historic England's GPA2 document[164] makes reference to cumulative harm being a consideration where development severs *'the last link to part of the history of the asset or between the asset and its original setting'*. Similarly, this does not advocate the addition of harms to different assets. The whole of this paragraph in GPA2 reads:

> '*The cumulative impact of incremental small-scale changes may have as great an effect on the significance of a heritage asset as a larger scale change. Where the significance of a heritage asset has been compromised in the past by unsympathetic development to the asset itself or its setting, consideration still needs to be given to whether additional change would further detract from, or can enhance, the significance of the asset in order to accord with Framework policies. Negative change could include severing the last link to part of the history of an asset or between the asset and its original setting. Conversely, positive change could include the restoration of a building's plan form or an original designed landscape.'* [emphasis added]

6.179 This is clear in contemplating situations where a number of small-scale changes may harm an asset. The guidance does not suggest that cumulative harm would occur through a single development alone causing an increased level of harm to a particular asset because it may affect multiple assets.

6.180 Ms Wedd also made reference to Historic England's Good Practice Advice Note GPA3:[165]

> *'The third stage of any analysis is to identify the effects a development may have on setting(s) and to evaluate the resultant degree of harm or benefit to the significance of the heritage asset(s). In some circumstances, this evaluation may need to extend to cumulative and complex impacts which may have as great an effect on heritage assets as large-scale development and which may not solely be visual.'*

6.181 This refers to cumulative issues as separately defined earlier in GPA3, with the same phrasing as quoted from GPA2 above, and then makes reference to 'complex impacts', including non-visual considerations. Such impacts might occur where there has been a particular designed landscape (such as a park or garden or prehistoric ritual landscape) in respect of which processional routes through the landscape and designed associations may be a consideration. Nonetheless, this guidance in no way advocates the aggregation of impacts to increase levels of assessed harm on individual assets.

6.182 A sense-check comes through scrutiny of Ms Wedd's 'aggregation exercise', when inverted, where she states:[166]

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[162] ibid, paragraphs 6.1-6.55
[163] ibid, paragraphs 6.56-6.65
[164] CD3.12 paragraph 28
[165] CD3.17 paragraph 6.59
[166] Ms Wedd's PoE paragraph 6.65

'Taking into account the impact on the significance of each and all the heritage assets, designated and non-designated, I conclude that the cumulative impact of the proposed development would cause less than substantial harm to heritage significance at the upper end of that range.'

6.183 Given that it is common ground[167] that substantial harm would have such a serious impact on the significance of the assets that its significance is either vitiated altogether or very much reduced, it must logically follow that less than substantial harm at the upper end of the range, is approaching this level of harm. Taking York Farmhouse as but one example, a suggestion – indeed one analogous to that advanced by the Council - that the development proposed would result in such a level of harm when the fabric of the building, its gardens and former outbuildings would all remain unaltered and open land would remain between the building and built form, respectfully, lacks all credibility.

6.184 For the above reasons, as supported in evidence, the development gives rise to no objectionable heritage harm, and no conflict with the development plan, or with the Framework. This has importance for the tilted balance under Framework paragraph 11. The presumption in favour of sustainable development remains. In this appeal, the application of heritage policy comes nowhere close to presenting a 'clear reason' – indeed, *any* reason – for refusing the development within the operation of paragraph 11.

TRANSPORT

Transport Benefits

6.185 The appeal scheme demonstrates very clear transportation benefits in overall terms. Transport planning policy, including section 9 of the Framework, underscores the importance of securing high quality, accessible development. Central to minimising the potential for vehicle trips to the development proposed is the accessibility of local services and optimal public transport provision. As amply explained in Mr Tucker's Transport Assessment (TA)[168] and as reinforced in the Highways Statement of Common Ground (HSoCG)[169] the site clearly benefits from excellent locational advantages, being in close proximity to a built up area. Indeed, it is agreed that Medway and the settlement of Rainham benefit from *excellent* transport links including public transport, with bus, foot and cycle links within the settlement obviously connecting well to adjacent communities, with good road links also to the principal road network.[170]

6.186 As part of the appeal scheme, the provision of a Travel Plan would also be financed and would include sustainable travel information packs for every household that forms part of the Development. This information pack would satisfactorily provide site specific information of sustainable travel options available to new residents, and would be secured prior to household occupation. The Framework Travel Plan[171] is agreed in principle, with final details (welcome packs, with up-to-date public transport information and

[167] Heritage SoCG CD11.2 paragraph 3.14
[168] CD5.25
[169] CD11.4
[170] Ibid paragraph 4.11
[171] CD5.26 Ref 20230-04b Framework Travel Plan – 23rd September 2019

Travel Plan co-ordinator role) to be agreed post-approval. Even the Council's own assessment of traffic impacts (which should be rejected) when taking account of the utility of the Travel Plan, does not discount the possibility of *less than* residual cumulative severe impacts.[172]

6.187 The appeal scheme includes a local centre and primary school. It is agreed that these would all be located within a reasonable walking distance of the site and of all new occupants. The site is equally very well located in terms of education accessibility. Moreover, retail, health and leisure accessibility has evidently been well considered. Accessibility by all modes is notably very good, with a convenient supermarket, shops, dentist surgery and a range of services and facilities being located nearby. The development would also make an important financial contribution to the extension of an existing bus service, serving both the appeal site *and* existing residents.

6.188 Overall, given the extremely positive locational benefits of the site, it is strongly the case that the development scheme fully accords with relevant transport objectives under both development plan and national policy, and would make an important, positive contribution to sustainable development within the wider, Medway area. On this basis, and before turning to traffic impacts, the development is shown to fully meet the requirements of the Framework in terms of sustainable development. The Council further agrees the Appellant's position that the site is appropriate for residential development in the context of accessibility.

Council liaison

6.189 The Appellant has made every effort to engage proactively and openly with the Council on all highway matters from inception, and especially with regard to the Medway Aimsum Modelling (MAM).[173]

6.190 Following submission of a scoping report in November 2018, with the exception of a single 'draft response' from the Council received in August 2019 (which happened only to speak to traffic generation issues) no detailed feedback was provided on the transport evidence base already before it. Various meetings were subsequently held, initiated by the Appellant, through which the Appellant proactively scoped future common ground, leading ultimately to the submission of further technical notes in October 2019.[174] Regrettably, no positive response was then received from the Council on these documents, despite these explicitly and directly responding to all queries then raised by the Council.

6.191 In December 2019, the Appellant received a notably brief PowerPoint presentation of the outputs of the MAM[175] and then undertook, in agreement with the Council, further modelling based on MAM-derived traffic flows. These were reported in Technical Note 3 dated March 2020 (TN3).[176] No response has ever been received on these.

[172] Mr Rand Addendum PoE (ID35)
[173] The detail of discussions is set out in Mr Tucker's PoE, section 2
[174] CDs 6.2 and 6.7
[175] CD12.10
[176] CD6.11

6.192 Significant concerns were raised at that juncture about the validity of the MAM generally, including both inputs and outputs, leading to formal requests for further information on the modelling (on 7 and 23 July 2020). A response was not received to these points until 14 December 2020, following the Inquiry case management conference. That response was partial only and despite further requests (latterly 28 February 2021 email from DTA to the Council),[177] disclosure has never been made of the full detail of the MAM outputs, including how the MAM was optimising individual junctions, and no explanation of specific junction operation and causality of any queue has been forthcoming, so that the specific issues of impact (if any) may be properly understood from a MAM-perspective.

6.193 Aside from the MAM, the Appellant's letter dated 23 December 2020 requested confirmation from the Council that it agreed with the modelling paragraphs adopted in the DTA individual junction assessments. The first ever comments received on this came through Mr Rand's first proof of evidence.[178]

Significance of uncontentious transportation matters

6.194 In relation to the no longer contested RfR4 and the position of Highways England, the position is detailed in ID10.[179] Highways England (HE) has now agreed a scheme for Junction 4 of the M2 motorway to mitigate the impacts of the development proposed, involving a contribution towards improvements at the junction. That agreement between the Appellant and HE is entirely separate from any MAM modelling. As Mr Tucker explained in his evidence in chief, HE did not seek MAM outputs and based its decision wholly on the technical work in conjunction with the TA[180] and Addendum.[181] This is despite the junction in question being within the MAM area.

6.195 It is clear therefore, that HE has, justifiably, accepted in full the approach of David tucker Associates (DTA) as being technically robust, and in the context of assessing a development of this scale. This is an instructive endorsement.

6.196 Regarding RfR6 (highway safety) as Mr Tucker confirmed in his proof, further assessment work has been undertaken in respect of wider highway safety issues.[182] On this basis it is now agreed that the application is consistent with the requirements of the Framework paragraph 109 and Policy T1 in highway safety terms.

6.197 Regarding RfR7, (site accesses) further detail was submitted on the access arrangements as part of the TA Addendum.[183]

6.198 There are no outstanding issues raised by Medway in respect of highway safety in terms of the wider network or lack of information about site access points. No contrary evidence has been submitted, or examined, on this agreed position.

[177] Appendix B to ID42
[178] CD10.9
[179] ID10 - Position Reached with Highways England
[180] CD5.25
[181] CD8.3
[182] see additional work reported in CD8.1
[183] CD8.3

The 'highway network' and 'subnetworks' as the network for assessing traffic impacts

6.199 Policy T1 specifically relates to the need to assess the impact of a development on '*the highway network.'* As Mr Tucker explained, in the context of the administrative area-wide remit of policy T1, consideration should be given to the whole Medway Council area. That there are configured subnetworks does not justify a discrete subnetwork approach to be taken to '*the highway network.'* Similarly, there is no basis in policy terms (or in explanatory text) to 'carve up' the network and overlook (that is, completely ignore) the sound operation of other configured, neighbouring and wider subnetworks.

6.200 Beyond a point of pure policy construction and application, the Council has failed to advance any clear rationale for having adopted a 'network' examination so obviously constrained by a select, few subnetworks (Nos 2, 3 and 7). Yet, the Council's approach exceeds even this – it incorporates a *reconfiguration* of subnetwork 7, alongside subnetworks 2 and 3.

6.201 From the beginning therefore, the Council's assessment of the network impacts has been skewed. Inevitably this has materially infected its overall judgment on residual cumulative severe impacts, under national policy, as well as capacity impacts under policy T1. The absent rationale for this approach was echoed by Mr Rand's confusion over how '*the highway network'* had been approached by the Council for policy T1 purposes. He presented two irreconcilable versions during cross-examination. The importance lies in his clear agreement in cross examination[184] that the highway network should properly be interpreted as the wider area beyond subnetworks 2, 3 and 7. He confirmed also that his proof of evidence was silent on the impacts upon other subnetworks, and silent also on the wider taking account of impacts on any other subnetwork. With regard to these subnetworks, there has been no consideration by the Council – despite Mr Rand's appreciation of the global network assessment. He confirmed, in terms, that he had not conducted the test he considered correct with regard to policy T1.

6.202 The Council's resiling (in re-examination) from those clear answers in cross-examination is impeded by the further inconsistency with Mr Rand's evidence in chief regarding junctions and links. He then confirmed a need to consider the links and junctions of *all* subnetworks (which was not confined to subnetworks 2, 3 and 7 on that occasion) which may, in his view, have knock-on impacts elsewhere, when considering residual impacts.

6.203 Mr Tucker agreed with Mr Rand's first position, that residual cumulative impact should be considered across the whole modelled area, both in policy T1[185] and Framework terms. For completeness however, Mr Tucker has also engaged separately with an assessment of subnetworks 2, 3 and 7 alone. His evidence makes that clear. His overall conclusions on residual cumulative severe impacts remain the same.

6.204 Mr Tucker also confirmed[186] his correct appreciation of the complimentary acceptability test under Framework paragraph 108, and for residual cumulative

[184] XX Mr Rand (Youtube recording @ 15.41 on 20/04/21)
[185] EIC Mr Tucker (Youtube recording @ c12.30 on 21/04/21)
[186] Inspector to Tucker (Youtube recording @ c16.40 on 22/04/21)

severity under paragraph 109, properly recognising that there may arise unacceptable impacts and attendant traffic harms, but ultimately, this may prove less than severe.[187]

6.205 Contrastingly, the Council's individual subnetworks 2, 3 and 7 appraisal is entirely artificial. It is immediately shown *not* to be the case (a point resounded by the fact that Mr Tucker's assessment of subnetworks 3 and 7 impacts has not been challenged) that residual cumulative impacts within these two subnetworks are severe. The importance of this recognition is highlighted by the Council's second position that the relevant '*highway network'* should include, not exclude, these two subnetworks (ie networks 3 and 7) viewed as a cumulative whole.

6.206 It is also clear, as Mr Tucker explained, that there is no policy harm arising from the fact of congestion where this simply means that people would take a little longer to travel to their destination point. To define this as harm necessarily is unfounded. Separately, congestion of itself may indeed positively influence future travel choices, promoting a switch away from use of the private vehicle, which would have a positive impact and reflect sustainability.

6.207 Finally, whilst a transport harm may still arise in principle if, when cumulatively viewed, traffic impacts were found to be below the residual cumulative severe threshold, then this negative would ultimately not prove significant enough to support refusal of permission. This reflects the deliberate policy 'bar' of 'severity' presented by Framework paragraph 109.

Acceptability of Appellant's assessment approach

6.208 Fundamentally, the position adopted in this appeal by Medway in respect of traffic assessment of the appeal site is inconsistent with the only other residential development example that MAM has been used for in Medway. This is not a case then of a much tried and tested MAM model. This is also not a case of consistency of approach by the Council on MAM. Nor is it simply a concession to the fact that MAM is evidently not being taken up in the promotion of sites, such is the guidance-permissible choice, ie the opportunity consistent with the guidance either to elect to use MAM from inception, or to pursue a different course.

6.209 In April, during the Inquiry adjournment, the Council determined a planning application for land at East Hill. Mr Tucker's subsequent note to the Inquiry[188] confirms that this application was not refused on highways grounds. However, the officer's report sets out that the applicant undertook an approach of considering MAM derived flows, providing a consideration of net changes in traffic flows from the model, and then providing individual junction models (Arcady and LinSig) of each junction.[189] This approach is confirmed in the Transport Assessment for that application.[190]

[187] see Mr Tucker Rebuttal paragraph 2.6, page 3 (CD10.3)
[188] ID37 see also Mr Jarvis PoE paragraph 4.3
[189] ID37 pages 32-33
[190] paragraphs 6.3.1 – 6.3.4 Extract attached to ID37

6.210 The Council's written[191] and oral response is notably off-point. Mr Jarvis tried to suggest in cross-examination[192] that East Hill was distinguishable on the basis that no 'blocking back' was evident and separately, because wider, net transport betterment of the scheme had been shown (provision of link road etc.).

6.211 First, the Council has never advocated that the functionality factor of 'blocking back' (or, for that matter, any other functionality factor) is determinative of the robustness of the approach to assessment. There is also no evidence whatsoever that blocking-back was not an issue in East Hill, still less on magnitude. Second, whether net transport betterment is achieved is wholly irrelevant to the robustness of assessment in principle. Strikingly, East Hill demonstrates that an approach to assessment (evidenced by the East Hill TA) which is fully aligned with that of the Appellant, is robust - it has very recently been accepted to be robust by the Council. That no coherent explanation has been advanced by the Council for adopting a conceptually different approach to assessment in this appeal (and that no attempt was made by the Council to alert the Inquiry to the East Hill determination) is striking. The inescapable fact is that the East Hill approval itself presents unequivocal confirmation of the acceptability of Mr Tucker's TA and overall assessment approach.

Distinctions in approach (e.g. baseline validation) + Table 1/Functionality matters: updating

6.212 Despite an over-emphasis in cross-examination of Mr Tucker[193] on the validation of the base model, he has been clear, since rebuttal stage that, in order to narrow the scope of meaningful issues and, subject to significant, differentials regarding journey time assumptions made within the vicinity of the appeal site, the Appellant was content to accept that the base model validates to meet the Webtag guidance. Properly understood however, the acceptance (through Mr Tucker's rebuttal) in no way undermines the Appellant's assessment. For, base line validation aside, the Appellant's outstanding critique of journey times is significant in terms of the robustness of MAM outputs. As Mr Tucker identified, and the Council still fail to explain, some outputs are plainly irrational. There is no basis explained to confine these outputs, which must mean that the robustness of MAM is considerably undermined.

6.213 Nonetheless, the evidence base before the Inquiry is, any event, now complete, and a conclusion aligned with the Appellant's is properly founded when using those elements of MAM which are arguably credible (ie objectively with an appearance of soundness) in combination with the Appellant's own assessment, which suffers no irrational outputs. Both cross-examination of Mr Jarvis and the evidence in chief of Mr Tucker explored in detail this transition in the complete evidence base.[194] Findings can be summarised as:

[191] ID41
[192] XX Mr Jarvis (Youtube recording @ c16.30 on 19/04/21)
[193] XX Mr Tucker (Youtube recording @ c9.45 am 23/04/21)
[194] Reference Table 1 Page 18, Jarvis PoE (CD10.9)

Comparison between MAM and Isolated Junction modelling

Modelling Functionality	Evidence before the Inquiry
Spatial extent	Agreed whole of Medway in detail and external network
Diversionary impact	Assessed in Macro in MAM[195] and through TN3[196] - not disputed
Traffic routing based on congestion and travel times	Assessed in Macro in MAM [197] and through TN3 which was not disputed
Blocking back at junctions (impact of queuing on upstream junctions)	Assessed in MAM. Not accepted as an issue in TN3 or TN4[198] - no signficant queuing occurs
Flow metering (downstream effects of congested junctions)	Agreed assessed in MAM. Agreed assessed at Bowaters roundabout – LinSig Assessment and outputs in Mr Tucker's Second Rebuttal - not challenged in cross-examination.
Individual vehicle lane changing behaviour	Lane changes represented in LinSig and allowed for in Arcady.
Individual vehicle acceleration / deceleration	Assesed in MAM, but agreed to be of less signficance.
Bus routes	Assesed in MAM but agreed to be of less signficance. All bus stops on A2 have full laybys.
Corridor journey time analysis	Assessed in MAM, but only reliable if junciton capacity is reliable, which it clearly is not.[199]
Strategic traffic operation outputs (i.e. V/C)	Agreed and outputs accepted. Shows all networks as within capacity.[200]
Strategic Road Network impacts	Agreed not relevant. Only assessment merge/weave is relevant to Highways England network and impact based on Appellant's approach, agreed.

[195] See ID34 Part 2 – Flows and VC Plots
[196] CD6.11
[197] See ID34 Part 2 – Flows and VC Plots
[198] CD12.6
[199] EiC Mr Tucker
[200] ID36 paragraphs 3.10 – 3.12 (page 9–11)

Distributional analysis (select link analysis)	Agreed MAM and DTA approach both perform this and outputs broadly similar.[201]
Observed Traffic Demand Matrices	✓
Observed Trip Distribution	In both assessments. Appellant's approach based on indvidual journey purpose.[202]
Local Journey Purpose Splits	In both assessments. Appellant's approach based on indvidual journey purpose.[203]
Traffic Signal co-ordination and optimisation	In both assessments. Appellant's approach based on detail of linked junction within Bowaters and LinSig based optimisation as required by LTN 1/09.[204]
Merge/Weave assessment	Agreed not relevant. Only assessment merge / weave is relevant to Highways England etwork and impact based on Appellant's approach - agreed.

Macro vs. Micro

6.214 The MAM outputs are provided at both the macro- and micro-level. There is broad agreement[205] that the macro outputs show very little impact on the wider network. This is supported by the fact that the change in flows on most links are modest and within the daily variation in flows.[206] This is confirmed by the Council's own evidence.[207], summarised at ID43. Where there are changes in flows (Bowaters roundabout and routes to the east) and Lower Rainham Road, these impacts have been fully assessed and found acceptable.

6.215 At micro-level, there is significant variation between the DTA and the MAM outputs, to the point that the latter has shown to be irrational. No assessment or cross check has seemingly been undertaken by the Council to support their findings and the Inspector was (wrongly) invited simply to take the results at face value. There has been no auditable assessment of those outputs.

Calibration and Validation of DTA assessments

6.216 The position in terms of junction calibration[208] is agreed and was unchallenged in cross-examination. There was further no challenge on the geometrical inputs to any of the junction models submitted.

6.217 The Appellant's validation of the LinSig modelling (Bowaters and A2/Otterham Quay Lane in particular) was unchallenged.

[201] ibid Paragraph 3.8 (page 8)
[202] Transport Assessment (CD5.25 Section 5)
[203] ibid
[204] Mr Tuckers' Second Rebuttal (ID36) Paragraph 3.23 page 12)
[205] ibid paragraph 3.7 (Page 7) to paragraph 3.13 (Page 10)
[206] XX of Mr Tucker (Youtube recording @ c14.30 on 23/04/21)
[207] summarised at ID34a Pump Lane and Lower Rainham Transport Impact Appraisal Addendum 3
[208] MR Tucker First Rebuttal Paragraph 7.2 and 7.3 (CD10.13)

6.218 Mr Tucker explained that the validation of the two key roundabouts on which he was challenged (Will Adams Way and Lower Rainham Road) was appropriate and correct. He considered that the variation of queues needs to be considered in absolute terms, not proportional change.[209] Mr Jarvis accepted this in cross-examination.

Trip rates: the outline case for preferring Scenario 6A; TN3 and TN4

6.219 The Council has provided a significant number of different scenarios in the run up to the appeal and a number of review assessments were demonstrably wrong (including the wrong access strategy being tested). Scenario 6A is to be preferred. This includes a 2029 assessment which is consistent with National Policy Guidance. It also includes the DTA derived trip rates. These were subject to examination by Medway and the final adopted rates (at TN3) which addressed all of the comments raised by Medway to ensure they were site- and location- specific.

6.220 By contrast, the MAM adopts generic trip rates which includes a number of sites from TRICS which the Council specifically requested DTA remove from their assessment. The DTA trip rates are therefore clearly preferable and more appropriate. This was not challenged by the Council. On that basis, the appropriate outputs for testing the development impact should be a combination of the macro outputs of MAM Scenario 6A, and TN3[210] and TN4.[211]

Robustness of individual junction assessment: (i) Arcady; LinSig; constraints of LoS criteria; (ii) why no Blocking-back concerns; (iii) Lane changing; (iv) TAG-compliance; RFC and LinSig values (0.85, etc.)

6.221 Mr Jarvis agreed that the DTA models do not show significant issues at the junctions. The Council's principal concern about the DTA individual junction modelling approach was clearly related to blocking back. This was confirmed by Mr Jarvis in cross-examination where he confirmed it was one of the important elements of the MAM. However he also confirmed that in terms of overall capacity, the impacts are different in different locations.[212] In that regard it was suggested that east of Bowaters roundabout, the issue was link capacity, whereas at Will Adams Way roundabout and Lower Rainham Road it was primarily a junction capacity issue.

6.222 Mr Jarvis agreed that one of the principal causes of queuing on the A2 towards Will Adams Roundabout starts with congestion at Bowaters Roundabout, causing blocking back. He agreed also that if a junction is shown to be operating within capacity and without significant queuing there can be no blocking back effect. This is precisely what the Appellant's evidence shows.[213]

6.223 Amidst the debate on what LoS/RFC[214] or equivalent value should be adopted in terms of considering harm, ultimately, Mr Rand agreed that the approach adopted by Mr Tucker with regard to LinSig - which adopts 90% as a degree of saturation - was appropriate. Notably, the output of those assessments is not

[209] Mr Jarvis Addendum Proof paragraph 7.12 (ID52)
[210] CD6.11
[211] CD12.6
[212] XX Jarvis (Youtube recording @ 15.50 on 22/04/21)
[213] ID36 Tables 1, 2 and 3
[214] level of saturation/ratio of flow to capacity (also V/C ratio – volume capacity ratio)

challenged. It is also an agreed position that there is no guidance on roundabouts (Arcady outputs).[215]

6.224 Mr Rand confirmed that for comparison with his assessment, an RFC over 0.85 equated to an LoS of E and an RFC over 1 equates to an LoS of F.[216] This defines an LoS of F as being the threshold for severe.[217]

6.225 All of the junction modelling that the applicant has put forward for the key junctions shows an LoS, by Mr Rand's own assessment, of less than LoS F - and therefore applying his own definition, not severe.

Irrational junction outputs, unanswered: all subnetworks

6.226 The outputs of the MAM in terms of congestion are irrational. It is a basic, fundamental requirement of the modelling process that the modeller gives adequately detailed consideration to the robustness of the outputs of the model - and not just inputs (ie Base Model Validation). Medway has undertaken no critical review of the outputs or comparative assessment of its findings with empirically derived outputs from Arcady or LinSig. The results are significantly different.

6.227 In terms of Bowaters roundabout, the LinSig Modelling results at Table 3 of Mr Tucker's Second Rebuttal[218] went unchallenged. The geometric inputs and outputs of the Arcady modelling are also not challenged. In terms of the subnetwork detail, his evidence is confirmation of the matters below.

6.228 On the Council's closing,[219] the 2035 reference case had been adopted because that is what the Council had provided the Appellant with, and consistency was maintained with TN3. This means higher, more robust trip rates because they present an even later future year, incorporating the higher Medway trip rates. At paragraph 166(2) of the Council's closing, the contended 'sizeable' increase in flows *west of* Bowaters roundabout is certainly not sizeable in the context of the road network. In cross-examination, Mr Tucker confirmed that 100 v/h, over two lanes is *de minimis* and well within daily variations. In relation to paragraph 174(2) of the Council's closings, Mr Tucker explained in cross-examination that Arcady outputs total vehicle queues on a link, and that it is not correct, in order to achieve any fair comparison, to add all queues, on all lanes. The Council's comparison here is factually wrong.

6.229 Subnetwork 2: being the largest subnetwork, principally comprising the A2 and A289, being the main urban strategic distributor roads (all dual carriageway). These are obviously the most appropriate routes on which the Council should be focusing increased traffic movements.

6.230 The select link analysis from the MAM[220] shows the distribution of traffic from the appeal site. This confirms there would be nearly zero development generated traffic on the A2 West of Bowaters roundabout or on the Yokosuka Way, south of the Lower Rainham Road.

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[215] Mr Jarvis and MR Rand in XX
[216] XX Mr Rand (Youtube recording c10.50 on 21/04/21)
[217] Mr Rand PoE Paragraph 3.8 – 3.9 (Page 8) CD10.9
[218] ID36
[219] ID50 paragraph 166(1)(c)
[220] ID36 Appendix REB2C

6.231 The Appellant's assessment also demonstrates, based on MAM derived figures,[221] that there is not material change in traffic along those routes. This highlights another key irrationality of the MAM. Mr Tucker explained in evidence in chief,[222] that the change in flows on the A2 east of Bowaters roundabout was less than 40 vehicles per lane, per hour, well within the capacity of the link and well within the daily variation in flows. That could not create the significant and step change in traffic queuing that the MAM irrationally shows occurring along the A2 corridor between Bowaters and Will Adams roundabouts. Where there are increases in flow (at Bowaters roundabout and Lower Rainham Road) these junctions have been tested in an appropriate manner and demonstrated to be operating within capacity.

6.232 The Appellant's modelling output of the three main junctions shows them to be working within capacity. On that basis, with reference to Mr Rand's summary table of impacts,[223] the following corrected results apply - junction ID Nos 7, 9 and 12, are shown in Mr Tucker's evidence[224] to be operating at the equivalent of LoS D or E (worst case) – i.e. suitably within capacity.

6.233 It was agreed in cross-examination of both Mr Jarvis and Mr Rand that the congestion at junction ID Nos 8 and 10 were principally caused by blocking back issues from preceding junctions (Nos 12 and 9, respectively). Given the modelling shows no significant queuing at these junctions, no blocking back can occur. It must therefore follow that these would also reduce to LoS D.

6.234 Clearly, journey times presented in the MAM must also be wrong, given the fact the queues are significantly overstated and illogical. This would therefore significantly affect the overall journey time outputs presented by the Council. There would no longer be the severe impact it contends.

6.235 On that basis, and on Mr Rand's own appraisal methodology, the impact could not be residual cumulative severe on subnetwork 2. That is demonstrated, even before turning to Mr Tucker's assessment of this subnetwork, which confirms the same, unobjectionable impact.

6.236 Subnetwork 3: Mr Rand confirms that '*…the [*revised*] results show that the mitigation works reduce the impact of the development on travel times along this part of the A2 such that this is no longer in and of itself considered to constitute a severe impact*.' This is agreed.

6.237 The Council's conclusion of a significant overall impact only arises because the MAM shows a significant delay on Meresborough Road. Mr Tucker explained in evidence in chief that this was simply not credible. With reference to the vehicle flow plots[225] provided by the Council, the model is showing vehicle flows on the side road of over 500 vehicles per hour. This road only serves 30 houses as cul-de-sac, so as a matter of fact, the value is significantly wrong. If corrected, Table 2 shows the capacity of the junction would be comparable with that provided to the Council in Mr Tucker's email of 28 February,[226] and would be acceptable. This would, in turn, justify the significant readjustment

[221] Ibid Appendix REB2C and Tables 4, 5 and 6 of First Proof of Evidence
[222] XX Tucker (Youtube recording PM on 22/04/21)
[223] ID35 Table 1 page 4
[224] ID36 Tables 1, 2 and 3
[225] CD34 Part 2 – Flows Tab Scenario 6a outputs
[226] Appendix B to ID42

of the overall journey time outputs presented by Council. There would, again, applying their own assessed – when properly adjusted - no longer be a residual cumulative severe impact. The suggestion of such an impact becomes untenable.

6.238 By postscript, the 27 April 2021 Medway Note[227] only serves to highlight a fundamental flaw in the MAM. It is suggested that Moor Park Close is not modelled as a cul-de-sac and therefore higher traffic flows are shown on that link. But, as a matter of fact, the road is a cul-de-sac and therefore physically could not begin to generate the level of traffic suggested in the MAM. Otherwise put, point 2 of the Note suggests that traffic from other residential areas to the south are assumed to route through Moor Park Close. This cannot be correct in practice, and traffic should properly have been loaded at a completely different location on the 'network.'[228] Link 14554 which has an observed flow of 20, is entirely consistent with the Appellant's survey. However, given that this node is one raised specifically as one of concern, it is essential that the inputs are correct in order for weight to be given to the outputs. The fact that MAM loads such a significant level of traffic onto that point in the network where that traffic could not conceivably exist, again highlights the fundamental error of approach and means no weight can be given to findings within this location. This confirms the results in relation to Subnetwork 3 from the MAM have no credibility.

6.239 Mr Jarvis' note[229] does not clear up the identified anomaly, or its scale. The MAM outputs show 500 (not 300) v/h using Moor Park Close. Even if the Close comprised 200 houses, the represented level of traffic is simply not credible. As Mr Jarvis confirmed, MAM assumes all of this traffic must route to the A2, via either Moor Park Close or Meresborough Road. This therefore means a fundamentally erroneous level of traffic has been loaded onto Meresborough Road/Otterham Quay Lane junction. Mr Jarvis' final explanation only serves to confirm the Appellant's criticisms of MAM and the unexplained, unarguable anomalies arising.

6.240 Subnetwork 7: Only one issue is raised by the Council regarding subnetwork 7 in Mr Rand's evidence.[230] This assessment is out of date in that it does not take into account the additional mitigation proposed. Mr Jarvis's Addendum Evidence[231] confirms that, with additional mitigation,[232] the queue on Lower Rainham Road is reduced. Mr Rand confirmed that this would reduce the impact on that arm to less than severe. This is agreed, and to add, it is very substantially less .

Journey Times: V/C[233] and Wider impacts

6.241 At macro level, MAM outputs show several key data outputs which were not actively promoted in the Council's evidence, but form a key part of the

[227] ID54
[228] There is presumably a 'typo' in the 27 April Note as it refers to link 145554 which does not exist in the Model Validation report. This is assumed as 14554 (p153).
[229] ID54
[230] ID35 Paragraph 2.2 and 2.3.
[231] ID35 Paragraph 4.5 page 32
[232] Drawing 20230-10B
[233] Volume/Capacity ratio – measures level of congestion on a roadway by dividing the volume of traffic by the coded capacity of the roadway

evidence base.[234] These show traffic flow plots and VC plots (the ratio of flow to capacity, both in terms of links and junctions) for the reference case and with development scenarios.

6.242 The MAM modelling shows no significant changes in the overall number of links on the network (Medway-wide) that operate with a VC of over 1. This includes all three sub networks considered in detail. Mr Jarvis confirmed in cross-examination[235] that the VC plots were determined by COBA[236] speed flow curves. By definition therefore, a VC of less than 1 means that vehicle flows are within capacity as a matter of fact. The wider impact of the development cannot therefore be residual cumulative severe.

Other

6.243 In cross-examination, Mr Tucker confirmed his use of Aimsum software on two other sites, principally in Sheffield, confirming that the situation there was analogous to the process adopted in the appeal case, whereby the model was used alongside a standard TA approach (at the then request of Sheffield). In that case Highways England did not accept the findings of the Aimsum work, and its principal concern had been J34 of the M1, as concluded through a combination of LinSig work and Aimsum. No implications for Mr Tucker's approach taken in this appeal therefore arise.

6.244 In terms of baseline validation of MAM, Mr Tucker accepted it was comprehensive and in line with DfT requirements, save for key outputs in relation to journey times. These are particularly important given the significant concerns about the outputs of the MAM in terms of journey times for the development testing scenarios on subnetwork 2.

6.245 To add, in light of the lack of an audit of the model, it is clear that subnetwork 3 is wrong. In turn, this is illustrative of the need to critically appraise all model outputs, which has not been done by the Council, and casts considerable doubt over the Council's assessment.

6.246 Mr Tucker confirmed that in terms of the principle of identifying the impact of a specific development site that the model has been used for, the outputs have not enabled the identification of mitigation measures. He further confirmed that he had not received full details of the MAM validation until he received Mr Jarvis' rebuttal,[237] despite a request for all model validation reports from 8 December 2020. Indeed, it remains the case that full auditable outputs of that work have not been provided.

6.247 In relation to the DTA approach to modelling, Mr Tucker explained the model calibration.[238] This was not challenged. On validation, he explained that the queues were consistent with observations and consistent with his conclusion that it is most unlikely that there is systemic bias, given that the majority of

[234] These are presented at CD ID34 (Part 2) in full and in partially summarised form in ID43/44 and Mr Tucker's evidence.
[235] XX Mr Jarvis (Youtube recording AM 20/04/21)
[236] Cost Benefit Analysis - estimates the effects of highway improvements in terms of travel time, vehicle operating and accident costs on users of the road system.
[237] CD10.16 Section 2
[238] CD10.13 Paragraph 7.1-7.3 Page 11

junctions are on dual carriageways where the ahead-traffic can use either approach lane.[239] The risk is low.

6.248 With respect to model geometry, the Council expressed no concerns and these elements were not challenged. In any event the point is moot, because for the two junctions concerned (Will Adams roundabout and Lower Rainham Road) mitigation has been proposed which changed the model structure in any event, meaning that base line validation would not change the outputs of the assessment. Those outputs have also not been challenged.

6.249 Mr Tucker acknowledged that the MAM validation had been accepted by Highways England, but confirmed that this was not relevant because its position in respect of the appeal scheme was based on the Appellant's TA approach and was not reliant on the output of the MAM modelling. He also agreed that individual junction modelling did not provide details of wider journey time but confirmed his view that as the junction models showed them to working within capacity the impact on journey times would be limited.

6.250 It is agreed that lane change behaviour is dealt with in the MAM and can affect junction capacity. However LinSig allocates movements to lanes and the approach in the LinSig was not challenged.

6.251 Mr Tucker also explained that Arcady has an entry capacity for a given width, but there is a way to look at unequal lane usage.

6.252 In terms of the outputs, the Will Adams Way mitigation allows for a better balance of lanes at the approach for traffic through the junction. Mr Tucker confirmed that the intention of the mitigation is to redress the balance and allows for the filter lane to be used. Therefore capacity is not worsened and has a significant benefit to the operation of the critical arms of the junction.

Third Party Matters

6.253 From a comprehensive review of the objections, none raises any specific issue not otherwise addressed, or concern regarding the technical detail of the access arrangements and none raised issues of design or detail. In relation to the wider development, the concerns may be categorised as follows.

6.254 Access arrangements and adequacy to serve development - junction capacity testing has been undertaken in the submitted Transport Assessment[240] and in Technical Note 4.[241] A link capacity assessment is set out in Mr Tucker's evidence.[242] This demonstrates the access strategy is wholly appropriate to serve the Site.

6.255 The MAM modelling confirms that there are no issues at the site access junction on Lower Rainham Road.[243] It is agreed common ground with the Highway Authority that the site access arrangements are suitable and would operate within capacity.[244]

[239] ibid paragraph 7.4
[240] CD5.25
[241] CD12.6
[242] Mr Tucker PoE Tables 4, 5 and 6, plus ID36 Paragraph 3.10 and 3.11
[243] CD12.2 Table 17 and 18 (Pages 22 and 23 confirm this).
[244] CD12.4 Paragraph 7.3 and 7.4

6.256 Public Transport is clearly addressed in the TA and is summarised in Section 4.3 of Mr Tucker's evidence. Appendix A of the HSoCG clearly shows the excellent connectivity of the appeal site to the local and wider area. A high quality 10 minute bus service (No 182) running to the south of the site would fall within a reasonable walking distance of 80% of the houses within the development.

6.257 Chatham Station is considered to be the most likely to be used by new residents of the development as it provides frequent high speed travel to London as well as local services. It would be accessible from the site by both the existing services (182 and 101) and the proposed extension to Service 1. On the basis of the parking costs at Rainham station, public transport access to the stations would be more preferable than new residents driving and parking. Accordingly, there would not be significant parking demand generated by the appeal site.

6.258 As set out in the TA, pedestrian/cycle access to the proposed development would be achieved through a number of connection points, as indicated on the illustrative masterplan including via the proposed vehicle access from Lower Rainham Road, via a series of footpath links to the site including from Lower Rainham Road (north), Lower Bloors Lane (east), and Lower Twydall Lane)[245] to the (west), and via the proposed vehicle access from Beechings Way and on to Pump Lane (south). These connections to the north, east, south and west would provide a good level of connectivity to the local area and nearby facilities.

6.259 In relation to the independent Road Safety Audit,[246] all recommendations have been accepted and it is common ground with the Council and the local Highway Authority that access is acceptable.[247]

6.260 Traffic impact clearly is raised numerous times by local residents and the main answer to that is set out above because it is also the key, and only issue being raised by the Council on highway matters.

6.261 Air quality related to traffic levels is also raised - an air quality assessment has been undertaken by Peter Brett Associates which has assessed the impact of the proposed development on air quality.[248] This is not affected by discussions on trip rates because the Appellant adopted a robust approach to AADT (24 hour flows) which went into Mr Tucker's model.

6.262 Regarding transportation therefore, the appeal proposal is supported by a Transport Assessment, underscored by a sound methodology, technical work, best available data, and sensitivity testing. It is robustly concluded that national policy and development plan transport policy is met. There are no objectionable highway safety or traffic impact issues. For example, the alleged queuing time/delays would not pass the threshold into severity for the purposes of the Framework.

[245] See ID12
[246] CD8.1 part 1 Appendix G (Page 297)
[247] CD12.4 Paragraph 7.4
[248] CD5.28 and CD6.4

6.263 There is also no outstanding objection from Highways England, subject to appropriate mitigation coming forwards in respect of M2 Junction 4, the principle of which is agreed, as are the mechanisms for securing this.

BEST AND MOST VERSATILE AGRICULTURAL LAND (BMV LAND)[249]

6.264 The development upon BMV land gives rise to no conflict with development plan policy – there is no relevant development plan policy. The BMV land debate only engages paragraph 170(b) of the Framework.

6.265 The Framework-centred discussion is also heavily contextualised by the Council's driven admission that significant residential development will, in the foreseeable future, need to come forward on BMV land, not merely agricultural land, within the District in any event, such is the enormity of unmet housing need.[250] That is the same foreseeable future that the Council wishes to portray the Local Plan in. It can't have it both ways. The Council tries to impress that the Local Plan will deliver up some housing sooner than 2025, but then it must also recognise Mr Canavan's concession. That admission also takes account of future Local Plan development. So the principle, in complete alignment with the appeal scheme coming forward now, is something which the Council readily acknowledges and, in fact, should properly be taken to welcome.

6.266 It is notable also that the Council has neither argued nor evidenced any intrinsic value, either in '*economic'* or '*other benefits'* (Framework) terms of this BMV land that is, over and above the mere fact that it is BMV land, in comparison with, or in contrast to, other BMV land sites, whether within or outside the District. The appeal site discloses no *comparative* value in either terms. Indeed, the Appellant's case goes further. The appeal site holds very little or no 'economic' value. This is clearly significant given the emphasis in the Framework, which should not be applied as if blanket-assuming that all BMV land holds this, or equivalent value. That would be to wrongly extend paragraph 170(b).

6.267 Further to the Council not arguing any discrete value, it is not even suggested that other BMV land sites within the District should, or would under the eventual Local Plan, come forward for development *ahead of* the appeal site. This is separately important in the context of the Council's in principle admission of the acceptability of residential development of sizeable BMV land within the District. It was no suggestion of Mr Canavan that the inevitability of development of BMV land in the future would be constrained to land the size of this site, or smaller.

6.268 The Council's own case is that no more than *moderate* weight could properly be given to the complete 'loss' of BMV land through the appeal development. Even this recognition is incomplete for paying no objective regard (there having plainly been no assessment) to the extent of the Council's housing land shortfall and very distant plan-making exercise, across a District within which so much BMV land today exists, undeveloped.

6.269 This context alone justifies attributing *modest* weight to the loss of BMV land in Framework paragraph 170(b) terms, even before undertaking a fuller

[249] Best and most versatile agricultural land
[250] XX Mr Canavan and PoE Mr Canavan

exploration of the site's specific characteristics, viewed in a commercial agricultural/analogous context, which strongly bears out why its BMV land status is much less significant with regard to its particular physicality, the ongoing (or other future) agricultural use and the productivity of the site, the development scheme and the Council's catastrophic housing supply position.

6.270 A flawed criticism is levied at the Appellant's evidential presentation of unviability, or alternatively, of an inability for the site to return a reasonable future level of sustainable profit ('no reasonable profit') being the two separate thresholds advanced by the Appellant. The criticism is unfounded. First, no challenge is actually made to the *confidentiality* of the relevant viability (or no reasonable profit related) material, or to the fact that it has been considered by an expert, Mr Pelham, on behalf of the Appellant. Commercial confidentiality is rightly ascribed. Second, no challenge is made to Mr Pelham's professional expertise in his assessment, and financial reporting upon, that material.

6.271 The Council ignores the reality that an assessment by the Inspector of unviability (or 'no reasonable profit') could not properly be undertaken without *full, public* disclosure of all commercially confidential documentation. The Appellant well appreciates this, but cannot waive this confidentiality. Whilst therefore, procedurally, it is acknowledged that there is some (albeit limited and very often, not full appraisal) allowance for a confidential appraisal by a local planning authority of viability material in determining an application, this has no application to decision-making by an Inspector, whether or not in a recovered appeal. As such, the confidentiality of relevant information not being in question, all commercially possible disclosure has come forward.

6.272 Ultimately, neither the Inspector nor the Secretary of State are hindered. Mr Pelham explained the comprehensive assessment and all central conclusions within a framework that can be readily understood on the evidence, without admitting confidential source documents. His checklist of the information reviewed, reinforces this.

6.273 Ultimately therefore, it is in no way undermining of the Appellant's case that the Council might not have resisted the unviability (or no reasonable profit) case, had it been able to receive other confidential source documents. Indeed, basic but fundamental errors conceded in the Council's assessment, including on basic industry pricing, casts particular doubt on the Council's professional ability in the viability (or no reasonable profit) assessment, had even there been confidential disclosure. There is, respectfully, clear disparity in industry and practical experience between the relevant witnesses.

6.274 Separately, it is no good point against the Appellant's unviability (or no reasonable profit) case - and it has never been a point made by the Council - that no marketing information has been made available in relation to the appeal site. There is no reason why this should have come forward. The Planning Practice Guidance on viability also has no direct application in this instance, and no evidential requirement (or adverse inference) can properly arise as such.

6.275 Framework paragraph 170(b) specifically enquires of the particular economic or other benefit of the BMV land in question. That question is not simply answered by reference to the apportionment or particular grading of

agricultural land. Paragraph 170(b) is wider than that. Furthermore, given the site-specific assessment, it is far from being a necessary corollary of Mr Pelham's analysis that all sites comprising BMV land are unviable or unable to return a reasonable profit. The evidence has been site-specific.

6.276 Lastly is the suggestion that historic due diligence undertaken by the Appellant, and discrete investments undertaken historically in respect of the appeal site, is somehow circumstantial evidence that the site is viable *today*. This does not compare like with like. Further, the Council is in no position to gainsay the level of profitability at the date of the Appellant's acquisition, and the invited speculation by the Council is regrettable. Further still, as Mr Pelham explained, many farm owners invest in sites (often for short periods as satellite sites) which would be independently loss-making. The Council's remote, unevidenced, speculation, borne of a desk study review infected by basic errors of assessment, including on pricing, that the appeal site could draw a 'healthy profit', is baseless.

6.277 Turning to the viability assessment, Mr Pelham expertly framed the increasingly challenging economics of UK farming. The indisputable, long-term trend is that the profitability of UK farming continues in steady decline.[251] Declining profitability, albeit with some seasonal variation, applies to all agricultural and horticultural enterprises (including the farming of the appeal site) is ultimately the consequence of static, sale prices and increasing costs of production.[252] The consequence of this financial 'pincer' is that the profits of farming enterprises are diminishing. The circumstances of the site render it especially vulnerable. The farming response to these deteriorating economics has been the continued pursuit of improvements in productivity, most significantly, changes to production methods (to secure improved yields) and increases in scale of operations (to enlarge holdings).[253]

6.278 Mr Pelham explained that whilst nearly all farming costs increase over time, there are some categories where inflation is greater than others, most importantly for employment costs. Other examples include machinery, crop protection products, seeds, plants and trees.[254] Increasing employment costs, in particular for seasonal employees, are most relevant to those enterprises where labour represents a significant proportion of production costs, including horticultural crops such as apples, pears, strawberries, raspberries, vegetable and salad crops. Contextualising these increases for 2000-2020, wage rates for seasonal workers have increased by some 200%.[255] During 2016-2020, the cost of seasonal employees for crop husbandry and harvesting has, for many growers, exceeded 40%. These disproportionate wage rate increases over the last five years, unmatched by improvements in sale prices, have radically reduced the profitability of apple and pear crops and, therefore, the financial viability of Pump and Bloors farms.[256]

6.279 Mr Pelham explained four key site-specific constraints of the Pump and Bloors farm enterprises which have significantly restricted (and would restrict) the

[251] ID6
[252] Mr Pelham PoE p.12, paragraphs 4.1-4.3
[253] ibid p.13, paragraphs 4.4
[254] ibid p.13, paragraph 4.14
[255] ibid p.13, paragraph 4.9
[256] ibid p.15, paragraph 4.17-4.18

capacity for profit, resulting from either reduced output (yield and/or price) or increased costs:

(a) overall farm area and satellite operation (increased costs);[257]

(b) the size and layout of the orchards (reduced price and increased costs);[258]

(c) the clones of Gala and Braeburn apples (reduced price and increased costs);[259] and,

(d) orchard age (reduced yield and increased costs).[260]

Overall farm area and satellite operation

6.280 With regard to the overall farm area, the Pump and Bloors cropped farm area of around 43 hectares is no longer adequately sizeable to be run independently and support the dedicated costs of a manager/operator and key machines (eg a tractor and sprayer). It must be operated as a satellite of another farm site. Satellite sites incur significant additional costs (transport of equipment, staff and produce, and for management etc). These additional costs have been shown to be proportionately higher for smaller areas of land than they are for larger areas (say 100 hectares or more) typically in the range £20–50 per tonne.[261] Whilst some economies of scale may be gained as a consequence of satellite operation (eg store manager at central site) these savings are considerably less than the additional costs of operating a satellite unit.[262]

6.281 These additional costs of satellite operations have been shown to be increasingly difficult to support in the face of radical recent reductions in the profit of horticultural crops, with a high requirement for labour (such as apples and pears). Under current and likely future economic conditions, expert opinion identifies a minimum orchard farm area of 60 hectares required to support the dedicated costs of a manager/operator, a three-row sprayer, (whose lower costs of operation would be crucial in maintaining future financial viability) and a scale suitable for future developments in the mechanisation of apple harvesting.[263]

Size and layout

6.282 Site-specific constraints also exist, some being permanent and irremediable. Pump and Bloors farms comprise nineteen orchards. Twelve of the orchards are less than 2 hectares and were financially unviable in 2020 due to their disproportionately high costs.[264] Optimal orchard planting is with rows running north/south, given that this reduces shading and increases crop yield and quality (eg apple colour). Given that at Pump Farm, 13.75 hectares (or over 60% of the crop area) are planted south-east/north-west, their alignment reduces their potential for profit.[265]

[257] ibid PoE p.8-9, paragraphs 3.3-3.8
[258] ibid page 9, paragraphs 3.9-3.13
[259] ibid page 19-20, paragraphs 5.7-5.12
[260] ibid page 19, paragraphs 5.4-5.6
[261] ibid page 8, paragraph 3.6
[262] EiC JP (Youtube recording c1.23 22/2/21)
[263] Mr Pelham PoE page 24-25, paragraphs 6.21-6.24
[264] ibid PoE page 9, paragraphs 3.10-3.11
[265] ibid paragraphs 3.11-3.12

6.283 At Pump Farm, the intrusion of both buildings and rented land into the cropping area much restricts the ability to increase orchard size with the right alignment, as does the 1.5 metre drop at the northern end of Blocks 15 and 16.[266] Bloors Farm effectively comprises two cropping areas separated by a bridleway, which not only increases production costs, but also restricts crop yield and quality, due to shading, in the neighbouring orchards to the north.[267]

Clones of Gala and Braeburn

6.284 Some 32.98 hectares, equivalent to 87% of the combined Gala and Braeburn area at the appeal site are planted to the Gala Mondial and Braeburn Hilwell clones. Both clones are becoming obsolete, due to their lower value and higher costs of production, as a result of poorer colouration than newer alternatives, and are now only capable of small profits, even with good yields.[268] All of the 32.98 hectares of Mondial and Hilwell at Pump and Bloors farms requires replacement in the near future.

Orchard age

6.285 Some 6.36 hectares of the orchard area (some 15% of the total Pump and Bloors cropped area) are over fifteen years old and are becoming too old for commercial production. These orchards are financially unviable and require replacement in the very near future.[269] The combined area of superseded Gala/Braeburn clones and old orchards represents the clear majority of the cropping area of Pump and Bloors. In the assessment of future financial viability, the replacement of all of the Pump and Bloors farms orchards have been properly factored into account.

Potential future profits: apple production

6.286 The orchards at Pump and Bloors farms would require replanting in the near future as a consequence of their existing size, layout, clone or age.[270] The financial viability of new orchard plantings has therefore been considered. This has been undertaken through the preparation of a lifetime financial forecast for a new Gala apple orchard planted in 2024, on soils of equivalent quality to those at Pump and Bloors farm.[271] Reasonable assumptions have been made in the preparation of the model, including that the Gala sale price remains unchanged throughout the orchard's sixteen-year life, but that costs of production increase at identified rates.[272]

6.287 Mr Pelham (orally) identified the information sources provided to him by the Appellant.[273] This included information on the prices received from supermarket customers, which he identified as being consistent with his experience of those supermarket prices being achieved by other growers. Those prices showed no increases over the period under review.

[266] EiC Mr Pelham (Youtube recording c1.32 22/2/21)
[267] ibid (Youtube recording c1.36)
[268] Mr Pelham Poe page20, paragraphs 5.9-5.12
[269] ibid p.19, paragraphs 5.4-5.6
[270] EiC Mr Pelham (Youtube recording c2.13 22/2/21)
[271] Mr Pelham PoE page21-22, paragraphs 6.1-6.8 and Appendix V
[272] ibid PoE p.21, paragraph 6.3
[273] EiC Pelham (Youtube recording c0.33 22/2/21)

6.288 Mr Lloyd Hughes (proof of evidence and orally) had wrongly suggested that, based on available DEFRA statistics, apple prices have, in fact, increased in recent years.[274] The DEFRA statistics are for the total volume (in tonnes) and value (£ million) of UK dessert apple production for the period 2008-2019. Using these figures, a calculation of the average apple value had been made for the 2010 and 2019 years. The difference between the two calculated figures has been described wrongly as a trend.[275]

6.289 Mr Pelham orally confirmed why the use of data for the calculation of changes to apple price was unfounded, due not least to the significant changes in the mix of varieties between the 2010 and 2019 years.[276]

6.290 Mr Lloyd Hughes' Note to Inquiry[277] confirms that his previous reliance upon DEFRA's figures to ascertain the wholesale value of home-grown Gala apples for years ending October 2019-20[278] was misconceived. This, in turn, reinforces Mr Pelham's confirmation that sale prices have substantially remained static, and appreciation of the relevance of DEFRA apple wholesale prices to the economics of UK apple production confirms that only a minor part of the UK apple crop is sold.

6.291 The only information before the Inspector regarding pricing is the metadata,[279] as addressed by Mr Pelham.[280] Mr Pelham also subsequently observed that in order to properly establish an actual trend, the expectation must be that all of the data for the ten-year period 2010-2019 would be included and that simply identifying a difference between the opening and closing years (mindful of the seasonal variations that can occur with apple crops) of itself does not come close to establishing a trend.[281]

6.292 The application of Mr Lloyd Hughes' method of calculation[282] to the intervening years 2011–2018, identifies the average dessert apple prices as follows:

DEFRA DESSERT APPLE TONNAGE/VALUE
CALCULATED AVERAGE APPLE PRICE 2011-2018

Year	2011	2012	2013	2014	2015	2016	2017	2018
£ Million	68	70	73	75	77	98	89	126
Tonnes'000	128	116	131	148	160	171	165	207
Average £/Tonne	**533**	**604**	**554**	**507**	**480**	**570**	**543**	**607**

6.293 These derivative calculations of Mr Pelham's evidence show no consistent upward trend in apple price during this period, with the calculated average price decreasing in four out of the eight years (2013, 2014, 2015 and 2017)

[274] Mr Lloyd-Hughes PoE page 13, paragraph 66 and Appendix RLH 07
[275] EiC Lloyd-Hughes (Youtube recording c1.09 18/2/21)
[276] ibid (Youtube recording c2.28)
[277] ID48
[278] eg paragraph 67 of Mr Lloyd Hughes' PoE
[279] Mr Lloyd Hughes Appendix RLH07
[280] Mr Pelham Rebuttal paragraph 23-27
[281] XX Mr Pelham (Youtube recording c7.00 22/2/21)
[282] Mr Lloyd-Hughes PoE page 13, paragraph 66

the calculated average price decreased. There has been no underlying upward trend in sale price over this period.

6.294 The calculations of average price, based on the only relevant evidence before the Inquiry, confirm a central assumption in the preparation of Mr Pelham's 2024 Gala crop model, being that apple prices remain largely static, albeit with some seasonal variations. In summary, the Gala crop model forecasts a turnover over a sixteen-year life of £694,141. Profit is forecast at £16,585 per hectare, equivalent to 2.39% of turnover.[283]

6.295 Mr Pelham identified that a 'reasonable profit' within the industry (one that takes into account the significant investment and production risks of apple production, required for a grower to consider an orchard investment) would be in the range 5-8% of turnover.[284] The forecast profit of the Gala model, at 2.39% of turnover, is below the range of 'reasonable profit.' As such, even if there were no incidents of hail during the sixteen-year lifetime of a Gala orchard planted in 2024, the forecast profit falls below the minimum level required to make this a commercial investment. The forecast confirms that such an investment would be financially unviable.

Hail

6.296 In the nine years since the acquisition of Pump Farm by the Appellant (2012-2020) there have been incidents of hail in five separate years.[285] Hail damage reduces profit and undermines the financial viability of apple and pear crops from both reductions in output (lost yield and reduced fruit quality) and additional costs (mainly harvesting and packing). Hail also undermines the financial viability of not only apple and pear crops, but also of other horticultural crops, including tree and bush fruit, vegetables and salads. It was confirmed that if the damage to apple crops is over 10%, it is likely that the entire crop would be loss-making.[286]

6.297 The average incidence of crop damage from hail at Pump Farm for the nine-year period 2012-2020, has been 10.4% per year. In the period since its acquisition in 2016, Bloors Farm has experienced the same incidence of hail as Pump Farm.

6.298 In order to understand the consequences of hail for the potential financial viability of a new Gala planting, a re-working of the 2024 planted Gala lifetime crop model incorporating the average annual hail damage of 10.4% suffered by the Appellant at Pump Farm in the period 2012-2020, was prepared.[287] In summary, the revised Gala crop model 'with hail' forecasts a turnover over a sixteen-year life of £629,031. A loss of £31,320 per hectare is forecast.[288]

6.299 Where the future incidence of hail mirrors the average of that experienced by the Appellant at Pump Farm in the nine years 2012-2020, a future Gala planting would generate a significant loss and is shown to be financially

[283] Mr Pelham PoE page 22 Table 8 and Appendix V
[284] EiC JP (Youtube recording c1.17 22/2/21)
[285] Mr Pelham PoE page10 Table 1
[286] ibid p.11, paragraph 3.21 and EiC Pelham (Youtube recording c1.47 22/2/21)
[287] Mr Pelham PoE page 22-23, paragraphs 6.9-6.13 and Appendix VI
[288] ibid page 23 Table 9 and Appendix VI

unviable. The same conclusion can be drawn in respect of other dessert apple varieties, including Braeburn.[289]

Future enterprises

6.300 A full assessment of the future economic viability of Pump and Bloors farms has appraised not only the likely profitability of the existing apple and pear enterprise, but also of all alternative farming and other uses to which the land may hypothetically be put.[290] No alternative farming or other use is shown to be viable or attractive with a view to the land use achieving a reasonable level of profit, even if use of the land was not practicably impeded in the first instance. The financial assessment of these other enterprises has also taken account of the initial capital cost of removing the existing orchards of between £40-100,000.[291]

6.301 The Agricultural Land Classification identifies that the soils at Pump and Bloors farms are suitable for growing a wide range of crops, including horticultural crops whose production may be limited or impossible on soils of lesser quality. The main categories of horticultural crops include tree fruit (mainly apples, pears, plums, cherries) soft fruit (eg strawberries and raspberries) hops, vegetables and salads. The requirement for BMV land for horticultural crops has reduced significantly in the last 30 years as a result of improvements in yields and changes to production methods (eg the widespread use of artificial growing media for soft fruit production).[292]

6.302 The most recent DEFRA data (2016) confirms that there are some 15,000 hectares of soil-grown horticultural crops produced in Kent, whilst an indicative calculation suggests that there are some 93,000 hectares of BMV land available for the growing of these specialist crops in the county.[293] These figures confirm that only 16% of BMV land in Kent was being used for horticultural crops in 2016.

6.303 The evidence suggests that there is considerably more BMV land available in Kent than is needed for production of specialist horticultural crops such as apples and pears, whose production is particularly suited to soils of this type.[294]

Looking at the potential viability of the main alternatives to apples and pears:

6.304 Fruit: This category includes other tree fruit (cherries and plums) and soft fruit. Like apples and pears, cherries and plums face continuing cost inflation over an extended period with limited, if any, any prospect of sale price increases (with cherries showing recent sale price deflation as a result of significant expansion of the UK crop area). Neither crop is financially viable at Pump and Bloors farms.[295]

6.305 The two main soft fruit crops, strawberries and raspberries, are now grown almost exclusively under crop covers (polytunnels). Whilst the combined area

[289] ibid p.23, paragraph 6.13
[290] ibid p.27-34
[291] ibid p.34, paragraphs 7.52-7.53
[292] ibid p.27, paragraphs 7.4
[293] ibid p.27, paragraphs 7.5-7.6
[294] ibid p.27, paragraph 7.7
[295] ibid p.28, paragraphs 7.10-7.11

of Pump and Bloors farms is theoretically large enough to support an independent soft fruit production unit, it is most unlikely that a soft fruit producer would seek to establish a new operation at this site, for a range of reasons.[296]

6.306 First, there would there be the significant cost of submitting a planning application for both polytunnnels and worker accommodation. Second, there is a considerable capital cost both for the initial investment (estimate £6 million) and for working capital (a further £4 million).[297] Finally there continues to be considerable uncertainty over seasonal labour availability, with the very real probability that it is not possible to adequately staff a new operation.

6.307 Vegetable and salad crops: Whilst the current apple crops are protected from vermin by individual tree guards, specialist netting would be required to protect the growing of vegetable and salad crops, at an estimated capital cost of £30-45,000.[298]

6.308 The capital expense of protecting against vermin and the lack of modern building facilities, together with the risk of hail, make the growing of vegetable and salad crops at Pump and Bloors farms either distinctly unprofitable (and significantly below the 5% - 8% threshold confirmed by Mr Pelham) or financially unviable.[299]

6.309 Cereals and potatoes: The smallness of the unit (< 50 hectares) divided into a number of small fields of irregular shape, means high costs of production for both potato and cereal crops, exacerbated by the additional costs arising from a lack of on-site storage and drying facilities.[300]

6.310 Whilst current evidence indicates that the growing of wheat would raise (negligible) profit without subsidy, , this would only be possible every other year. A break crop grown in the second year is likely to generate a loss that at least offsets, and probably exceeds, the wheat profit from the previous year.[301] As a consequence, the financial viability (and reasonable profitability) of cereal crops such as wheat and barley, together with the other crops that are grown with them in rotation (such as oilseed rape and beans) is highly dependent on the Basic Payment subsidy, which is to be phased out by 2028. This renders the future financial viability of these crops unlikely, and certainly improbable.[302]

6.311 For husbandry reasons, potato cropping can only be undertaken one year in five; it is most unlikely that a grower would wish to take on Pump and Bloors farms for an annual area of potatoes of less than 10 hectares.[303]

6.312 Hops: Reducing profitability has seen a considerable decline in the area of hops grown in the south-east. This crop currently has either limited, or no,

[296] ibid p.28, paragraph 7.13
[297] EiC JP (Youtube recording c7.17 22/2/21)
[298] Mr Pelham PoE p.29, paragraph 7.18 (corrected)
[299] ibid p.29, paragraph 7.30
[300] ibid p.30, paragraph 7.25
[301] ibid p.30-31, paragraphs 7.29-7.30 and Table 11
[302] ibid p.31, paragraph 7.31
[303] ibid p.30, paragraph 7.26

capacity for profit. There are no indications that this would change. The growing of hops is not financially viable at Pump and Bloors.[304]

6.313 Livestock: The combined area of Pump and Bloors farms is too small to support an independent grassland-using enterprise. The farms also lack appropriate buildings, fencing or drinking installations.[305] The issues of smell and the availability of land for the disposal of waste make the farms wholly unsuitable for either pig or poultry enterprises.[306]

6.314 Non-food crops: Pump and Bloors are unsuitable for crops grown for either biomass or pharmaceutical use for a range of reasons, including low profitability, the high cost of fencing for vermin control, the absence of specialist harvesting contractors and production risk.[307]

6.315 The ongoing agricultural enterprise at the appeal site has been shown to be unviable. Even were this conclusion to be rejected, then it has been shown that an incentivising reasonable level of profit is unachievable with regard to all conceivable alternative uses of the site. This conclusion reduces further still the weight capable of being given to the loss of this specific BMV land. No more than modest weight, at best, should be given to that consideration.

BENEFITS

6.316 When viewed together, the benefits of the development proposed are highly significant and wide ranging.[308] They include demonstrable economic, social and environmental benefits reflecting the three dimensions of sustainable development. All represent obvious material considerations, balancing further in favour of the development.

6.317 The derived housing gain, in both market housing and affordable terms, leads the most significant benefits - and should attract the uppermost, substantial weight. The relevant context here is stark given that the local and national housing markets are nothing less than broken, and the Council's delivery, over a very substantial period, has been disastrous. A proposal seeking to substantially improve Medway's position, and at this time, serves an obvious, purpose that cuts across all Framework dimensions, each attracting significant weight. Substantial weight should be given to *both* (i.e. each) market housing and affordable housing contributions. The Council's argued deliverability of sites within its supply does not improve the position. The Council's claim of substantial steps being taken, over the short term, whilst including sites within the ALLI (considered not objectionable) bear upon the 2019/2020 year only. Separately, the Council's ambition to meet a plan period figure under one or more future plan scenarios is an incredibly long way off.

6.318 The employment and training opportunities both during construction and on-going should also attract considerable weight. Derivative benefits include the release of funds from residential development on the site for reinvestment in other agricultural business.

[304] ibid p.31, paragraph 7.33
[305] ibid p.31-32, paragraphs 7.35-7.36
[306] ibid p.31, paragraphs 7.35-7.37
[307] ibid p.32-34, paragraphs 7.38-7.51
[308] Mr Parr PoE chapter 11 and paragraph 12.21 CD10.1

6.319 There is also the prospect for significant environmental and ecological betterment, significantly exceeding a future net biodiversity gain requirement, introducing new, native species of provenance and maximising ecological opportunities for species and overall value, including as part of new hedgerow planting, etc (as Mr Goodwin explained) the important provision of open space, a site accessible to both new residents and those already living in the location, much improved connectivity, improved habitat diversity and enhancement through both management of the existing boundary hedgerow and new planting, and improvements to pedestrian routes, cycleways and public transport enhancement.

6.320 The new school, recreational facilities and retail/business units in the heart of the scheme are facilities which would be of clear community benefit to both existing local residents and to new residents.

6.321 Other benefits to be weighed within the economic basket include indirect expenditure from new residents, and other revenue streams, such as council tax and New Home Bonus. The Development would bring direct construction-related employment, in turn, meaning a construction impact in the supply chain. There would be growth in the labour force, with the likely potential of workers choosing to relocate to work closer to where they would be able to live (adding that local employment would also be gained on the Site itself). Additionally, there would be an increase in derivative household spend, and a boost to the Council's own income through Council Tax revenue. The local economy, enhanced by localised benefits, would clearly be boosted significantly. There is no good reason not to view these benefits as anything other than significant.

6.322 The appeal proposal would provide substantial amounts of connected publicly accessible green space including a village green, community orchards and areas containing recreation routes and green infrastructure for informal recreation with landscape, amenity, as well as wildlife benefits, etc. These green corridors throughout the scheme would provide improved connectivity between neighbourhoods and greater access to the wider countryside. Infrastructure delivery should attract significant weight.

6.323 Then there is the stark economic and social context against which the Government's acknowledgment that development such as this should act as a primary answer to the national housing crisis[309] must be viewed. This failing, satellite site can be 'unlocked' through considerable private sector investment, within an obviously sustainable location, twinned with the reality of delivery by a committed developer, within an area suffering from disastrous housing delivery. If this site, within this area, does not merit coming forward for residential development, then the Government's programme for annual housing delivery nationwide is surely massively unachievable.

PLANNING BALANCE

6.324 The appeal scheme accords with the development plan when considered as a whole, meaning that permission should be granted as there are no material considerations which indicate otherwise. As it happens, other material

[309] See Budget Statement ID28

considerations including the very substantial benefits of the development much support the grant of permission.

6.325 The presumption in favour of sustainable development is engaged. The tilted balance tilts in favour of approval. In the context of Framework paragraph 11, various most important policies of the development plan are out of date for the purposes of determining whether planning permission is granted. Little weight, at best, should be given to these policies.

6.326 It is worth recalling, in the light of the tilted balance, precisely the purpose it is intended to serve.[310] In cases where there is no five year housing land supply, there are sound reasons for reducing the weight of housing *and also non-housing* policies. In that case, were considered environmental and amenity policies and designations, and the concern was expressed that '*the rigid enforcement of such policies may prevent a planning authority from meeting its requirement to provide a five-years supply.'*[311] He went on to say '*If a planning authority that was in default of the requirement of a five-year supply were to continue to apply its environmental and amenity policies with <u>full rigour</u>, the objective of the Framework would be frustrated.'* [312] The same essential principle applies to the operation of the tilted balance under the 2019 iteration of the Framework in the context of development plan policies, today

6.327 With regard to Framework paragraph 11(d)(i), it is also not the case that the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason (indeed, any reason) for refusal. The only remaining relevant policies relate to heritage assets which are subject to less than substantial harm. This does not provide a clear reason for refusing planning permission and must also be balanced against the benefits.[313] The presumption in favour of sustainable development is therefore not disengaged.

6.328 In application of Framework paragraph 11(d)(ii) therefore, the substantial benefits of the development are not significantly and demonstrably outweighed by any adverse effects in terms of landscape impacts, traffic effects, loss of BMV land and/or heritage harm.

6.329 Even if paragraph 11(d)(ii) was not engaged, for the reasons given above, it would remain the case that planning permission should be given for the Development, such are the residual harms and impacts.

<u>Landscape</u>

6.330 Mr Hughes concludes that the development would have residual moderate localised adverse effects on the landscape and the function of the site as part of the Green Buffer. Whilst the Council argues the effects to be greater, it nonetheless accepts they would be relatively tightly drawn around the site, with no long distance views. These effects would not compromise the objectives of the designation of the ALLI (policy BNE34). The development

[310] see *Suffolk Coastal v Hopkins: Richborough Estates v Cheshire East* [2017] UKSC 37, per Lord Gill (in the context of paragraph 14 of the 2018 iteration of the Framework)
[311] Paragraph 79 of the judgement
[312] Paragraph 83 of the judgement
[313] Framework paragraph 196

would also respond positively to the objectives of policy BNE34 by improving access to the countryside and permeability. The green infrastructure framework (Dwg PL005 Rev B) would respond positively to the landscape character. Any conflict with policy BNE 34(i) must inevitably be judged in the light of the fact that it considerably limits housing delivery (bearing in mind what Lord Gill had to say in Suffolk Coastal) and should carry substantially less weight as an out of date policy.

6.331 Policy BNE34 presents only a 'local' not national landscape conservation designation and therefore, its protection must be appropriately assessed in the balancing exercise. Evidently a national landscape designation would carry greater protection than a local landscape. In this regard, the Appellant's case is that the development is in accordance with paragraph 170(a) of the Framework when the impact on the landscape is assessed in a way commensurate with it local status as defined in the development plan. In the context of the very significant housing shortfall, the substantial housing provision, including significant affordable housing is, by itself, sufficiently important to outweigh the local landscape conservation priority. Moreover, when other significant economic, social and environmental benefits of the scheme are also considered the balance further weighs in favour of approval.

Transportation

6.332 Given the out of date characterisation, the material differences in policy, and the relative focus of the parties on Framework paragraph 109, there is no justification for giving policy T1 substantial weight.[314] If there is conflict with policy T1, it should be given modest weight only. There is additionally the point that if the policy is a most important policy in the determination of this appeal, it is one of the foremost development plan policies that would impede an approval in the light of the Council's housing position. No reasons have been advanced in evidence as to why Policy T1 should be given substantial weight in determining this appeal.

6.333 There are also no wider issues arising in connection with the harm the Council argues derives from the capacity issue. In this appeal, the impact of issues such as increased queuing and attendant delay should very much be considered in terms of the broader balance of highway issues that is allowed for under the Framework, but disallowed under Policy T1(i). Ultimately, it should be assessed whether such increased queueing or delay in fact gives rise to any identifiable harm, and moreover harm to such a degree that it is severe, when viewed residually and cumulatively, or with consideration of the appropriate network. As assessed by Mr Tucker, there is no basis for finding that there would be conflict with policy T1. However, even were such a conflict to arise, it should be given only modest weight.

6.334 In assessing whether the development would give rise to a residual, cumulative severe impact, the matters under paragraph 108(a)-(c) of the Framework have relevance. The appeal scheme encourages sustainable travel and has safe and suitable access and therefore meets the requirements of paragraphs 108(a) and (b). Paragraph 108(c) anticipates the impact of a

[314] **INSPECTOR'S NOTE**: that is a different position from that set out in relation to policy T1 in the agreed Position Statement on policy matters (CD11.6) as explained in ID46.

proposal in terms of congestion and capacity, when mitigated. This resonates also with paragraph 109. The Framework is purposely not constraining of how mitigation is to be taken account of, such that appropriate mitigation could be located adjacent to the development site or located within the wider network. It is considered that the transport mitigation proposed, both directly in relation to the development site, and in respect of the wider local network, would ensure no 'severe' residual cumulative impacts on the road network. It is considered that the level of any such harm arising would be significantly below the threshold contemplated by paragraph 109 of the Framework. Even if the Council's approach to configuring the relevant 'network' were to be adopted, the Appellant's judgment is strongly reinforced by an appropriate, wider consideration of traffic impacts, as advocated by the Framework, which are shown not to arise in this appeal.

6.335 Accordingly, there is no basis for refusing permission on transportation grounds. The development is therefore in accordance with Framework paragraphs 108 and 109.

6.336 The Council's position must also be seen within the context of Medway being a constrained urban area and the need for it to provide 28,300 homes between 2020 – 2037. Even with the Council's proposals for the Hoo Peninsula, as far off as they are, significant numbers of these homes would need to utilise the existing urban road networks and draw on its capacity. This, like many built up areas, is congested particularly in peak periods, and queuing and congestion can occur. If the permission is refused and more housing has to be provided elsewhere, highways capacity issues are likely to be displaced rather than prevented. Any highways capacity harm should only be given limited weight when balanced against the overriding housing need, lack of other significant harm and general sustainability of the appeal site.

Heritage

6.337 With regard to paragraph 11(d)(i) of the Framework, it is not the case that the application of Framework policies that protect areas or assets of particular importance provide any clear reason for refusal. In the context of the appeal scheme, footnote 6 of the Framework requires the paragraph 193 evaluation. The identified heritage assets are subject to far less than substantial harm. This is even before the balancing of the benefits required by paragraph 196 of the Framework. The tilted balance is therefore not disengaged.

6.338 Framework paragraph 193 requires the impact of a development on the significance of a heritage asset to be assessed, with great weight given to its conservation. In this case, it is the setting, not the assets themselves, which are affected. In all cases, the scale of impact is low, or very low, within the less than substantial range. Whilst the principle of conservation of the heritage asset must be given great weight, the very minimal harm individually and collectively to their setting should attract considerably less weight. Even if this is wrong, again, this must be balanced against the public benefits of the development clearly outweighing the impacts on heritage assets.

BMV

6.339 Release of the appeal site would also allow for investment in more appropriate agricultural land, helping to underpin the agricultural economy and provide

landscape and ecological enhancements. There is, as a result, no harm to rural objectives or policies. The proposed housing would not be contrary to Framework paragraph 170(b) or footnote 53. Moreover, whilst footnote 53 notes that release of poor grade land is preferred, it does not prevent the release of higher grade land. The loss of the appeal site from agricultural use is not therefore objectionable in principle.

6.340 If the 'loss' of the appeal site is considered harmful at all, this needs to be considered in light of the alternative locations where the council propose to promote housing development, particularly the Hoo Peninsula. Much of this is agricultural land and is of similar grade to the appeal site. It is also subject to other physical constraints such as flooding and protected designations such as SSSIs. In order to deliver the necessary housing, substantial areas of high quality agricultural land would have to be utilised in the District. These wider considerations must therefore be borne in mind when deciding what weight should be attributed to any harmful impact of the development proposed on agricultural land. This is acknowledged by Mr Canavan.[315] This residual harm is offset by the benefits of the development and does not individually, or with other factors, warrant refusal.

Third Party Objections

6.341 Detailed consideration has been given to all third party objections. The careful formulation of the appeal proposal demonstrates that none of the concerns ventilated by third parties, unsupported by the Council, are well founded.

CONCLUSION

6.342 When the impacts of the proposed development are fully and properly assessed, they fall substantially short of the overriding benefits. The adverse impacts do not come close to significantly and demonstrably outweighing the very important and varied benefits when assessed against the policies in the Framework as a whole. Permission for this sustainable development should therefore be granted in accordance with paragraph 11 of the Framework, out of which the tilted balance is itself a material consideration for s.38(6) purposes.

6.343 Moreover, even were it the case that paragraph 11(d)(ii) was not engaged, and the normal planning balance applied, planning permission should still be given. This is a development plan-compliant scheme and so planning permission should be granted without delay.

6.344 Separately also, this is indeed a case in which the development proposed could and should be approved even if it were characterised as a departure from the development plan (which it is not) on the basis that material considerations, including the benefits, indicate otherwise.

6.345 Substantial new areas of multifunction green and blue infrastructure are also embedded into the appeal proposal, incorporating new recreation routes and connectivity throughout the appeal site, and externally between the existing built environment and wider countryside. A village green and community orchards would form an integral part of a centre at the heart of the proposal,

[315] Mr Canavan PoE Paragraph 7.9 CD10.6

linking with new and existing publicly accessible green spaces, to compound benefits for new and existing local residents.

6.346 Moreover, any conflict found with deemed, or in substance, out of date (or any other engaged) development plan policy, would naturally not present any endpoint in analysing the development plan for the purposes of considering 'accordance' for the purposes of s.38(6), or with regard to identifying and assessing the impressive wealth of material considerations arising in favour of the appeal proposal. The many, conspicuous and very significant benefits presented by the appeal proposal heavily underscores this.

6.347 The clear strength of the benefits demonstrated by the appeal proposal mean that even were it to be concluded that it conflicts with given policies, planning permission could and should properly be granted, whether applying the tilted balance or not, in determining the appeal under s.38(6).

6.348 The Inspector is respectfully invited to recommend to the Secretary of State that planning permission be granted.

7. THE CASE FOR MEDWAY COUNCIL

This section is based on the closing submissions for the Council.[316]

INTRODUCTION

7.1 That there is a significant need for housing in Medway is not in dispute. It is a factor that the Council had at the forefront of its mind when considering this application. However, the degree of housing need cannot obscure the significant and demonstrable harms that this proposal would cause. Those harms are multifaceted and irreversible. The evidence at this Inquiry has demonstrated that these harms considerably and decisively outweigh the benefits of this proposal, including the delivery of housing.

CHARACTER AND APPEARANCE OF THE SURROUNDING AREA, INCLUDING THE GILLINGHAM RIVERSIDE AREA OF LOCAL LANDSCAPE IMPORTANCE AND THE ROLE OF THE APPEAL SITE AS A GREEN BUFFER

Context

A Valued Landscape

7.2 It is common ground between the parties, and their respective experts, that the appeal site is located within a 'valued landscape'.[317] National Policy affords a greater level of protection to valued landscapes than it does to 'ordinary' countryside. Whereas the intrinsic character and beauty of all countryside is to be recognised,[318] it is valued landscapes which are to be '*protect[ed] and enhance[ed]*.'[319]

7.3 Because of this agreed position, relatively little time was spent at the Inquiry in relation to this matter. But that we are dealing with a valued landscape must not be forgotten. It is an important starting point. There is no dispute

[316] ID50
[317] Main SoCG (CD11.1) paragraph 5.1(12) Landscape SoCG (CD11.3) paragraph 2.2(3)
[318] Framework paragraph 170(b)
[319] Ibid paragraph 170(a)

between the parties that the proposal would cause irrevocable harm to both the landscape character and visual amenity of this valued landscape.[320] The difference is largely one of degree of that harm. That being the case, on any analysis, the impact of this proposal would be contrary to the objectives of national policy for such landscapes.

7.4 For the reasons given by Mr Etchells in his written and oral evidence, the Council contends that the degree of harm to the landscape character, visual amenity and functioning of this valued landscape would be significant.

An 'essentially rural' character

7.5 The Medway Landscape Character Assessment (MLCA)[321] recognises that the Lower Rainham Farmland Character Area (LRFCA) retains its '*essentially rural character.'*[322] Moreover, although it recognises that parts of the LRFCA have a 'urban fringe character', the MLCA explains that the '*area between Lower Rainham and Lower Twydall* [is] *in generally good condition with urban influences less apartment.'*[323] It is this area in which the appeal site is located. Indeed, due to its extent the appeal site constitutes almost the entirety of the 'area between Lower Rainham and Lower Twydall'.

7.6 In neither his written nor oral evidence did Mr Hughes seek to suggest that the MLCA's assessment of the existing character of the area was wrong. To the contrary, in cross-examination Mr Hughes agreed that the MLCA was a robust and considered document.[324] Furthermore, the Tyler Grange (TG) Landscape and Visual Impact Assessment (LVIA)[325] sought to draw upon elements of the MLCA albeit, as is discussed below, selectively.

7.7 As is evident from the aerial photographs,[326] and as Mr Hughes accepted,[327] there have been no significant changes in the settlement patten, amount of built form or land use which has materially affected the character of the local landscape since the MLCA was published. This is also confirmed by Figure 3 in Mr Hughes' appendices,[328] which illustrates that the built form which has been consented in the LRFCA since the MLCA was published has been almost exclusively confined to the east of Rainham urban extension.[329] This area is a significant distance from the Appeal site and, as Mr Etchells explained, has a very different character.

7.8 The essentially rural character of the local landscape would also have been experienced on the site visit. The Inspector would, of course, take into

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[320] Main SoCG, paragraph 5.1(15)
[321] CD3.4
[322] ibid p69 [CD3.4] Whilst the MLCA refers to the "landscape type" of the LRFCA as "Urban Fringe", and the sub-type as "Urban fringe with urban/industrial influences," as Mr Etchells explains (his proof, paragraphs 3.4.10-11) this simply repeated the classification of landscape types which was undertaken in the much older Kent Thames Gateway Landscape Assessment (1995). At that time Bloors Wharf, to the north east of the site, was in industrial use (it was used as a Ship breakers and scrap yard), such that the local landscape would have had a different appearance and character. In XX Mr Hughes agreed with this analysis.
[323] ibid, p69
[324] XX Day 3
[325] CD8.3
[326] ID3
[327] XX Day 3
[328] CD10.3
[329] The one exception is Berengrave Nursery which was already an existing brownfield site and which, in any event, is separated from the Appeal site by a substantial area of woodland. It plainly does not affect the landscape character of the immediate area in which the Appeal site is located.

account the entirety of her comprehensive visit when assessing the existing character of the area. However, two elements of that experience are worth highlighting:

7.9 Firstly, when passing under the railway bridge on Pump Lane the change in character from suburbia to rural is abrupt. The '*clear physical and character boundary*[330] which the railway line provides between the urban edge (to the south) and the rural countryside (to the north) is not a phenomenon appreciated on plan only. It is experienced, viscerally, on the ground.

7.10 Secondly, the experience of walking along the bridleway which traverses Bloors Farm on the east of the Appeal site. This is, as Mr Etchells explains, '*a rural route, partly enclosed but with some open and attractive views across the orchards…'.*[331] The MLCA recognises that parts of the LRFCA are tranquil[332] and none is more so than this bridleway. Mr Hughes volunteered in cross examination that the bridleway was '*in the countryside, away from that urban edge'* and agreed that users would be aware that they were in the open countryside, '*having left the urban area'.*[333]

7.11 The MLCA underscores the importance of retaining this type of landscape in Medway. It explains that '*Open countryside, particularly on the fringes of urban areas has an important role to play in buffering, separating and protecting the local identity of different communities…'* and explains that '*[a]s a general principle and in order to retain openness and respect rural character in these buffer areas, major development proposals should be avoided.'*[334] In relation to the LRFCA itself, the MLCA proposed action is to 'conserve and create,' and one of its guidelines is expressly to '*[r]esist further built development'* in the area.[335]

Area of Local Landscape Importance

7.12 The importance of the local landscape in which the Appeal site is located is derived not merely from the quality of its rural character. The landscape also plays a number of important functions. This is underscored by the designation of most of the LRFCA (including the Appeal site) as an Area of Local Landscape Importance (ALLI), protected by Local Plan Policy BNE34. This designation reflects <u>both</u> the quality of the landscape character, and also the important functions that it plays, as is clear from the wording of the policy itself ('*it does not materially harm the landscape character <u>and</u> the function of the area' (emphasis added))* as well as its supporting text. [336]

7.13 The supporting text sets out the six functions that the Gillingham Riverside ALLI performs. The parties disagree about the extent to which the Appeal site contributes to those functions and the corollary issue of how the proposal would impact on those functions. This is a matter which would be considered in detail below. However, there is no disagreement on the continuing

[330] Mr Etchells Proof, paragraph 3.4.19
[331] ibid paragraph 6.7.1(g)
[332] CD3.4 p68
[333] XX Day 3
[334] CD3.4 p12
[335] ibid p69
[336] Mr Etchells PoE, paragraph 4.3.3

relevance and validity of those functions, notwithstanding the age of the Local Plan. In particular, it is important to note that:

i) The functions are supported by an objective evidence-base – the MLCA specifically highlights the "*benefits attached to this area retaining its essentially rural character*". Those benefits reflect, almost precisely, the functions identified in the supporting text to Policy BNE34. Thus, the authors of the MLCA – having undertaken a comprehensive assessment of the landscape character of Medway – were in 2011 reaffirming the identification of this area as an ALLI and, specifically, confirming the important functions that the landscape plays.

ii) The ALLI continues to perform the functions identified today – Mr Hughes accepted in cross-examination[337] that the functions originally identified for the Gillingham Riverside ALLI continued to apply in 2021. He also accepted that, if the Inspector were to find material harm to those functions, this would be a matter which would weigh against the proposal.

The Competing LVIAs

7.14 Somewhat unusually the Inspector and Secretary of State have the benefit of three LVIAs before them. Each has been undertaken by a landscape professional, and each considers, *inter alia,* the impact of the proposal on the landscape character and visual amenity of the surrounding area. They are as follows:

i) **Lloyd Bore LVIA (April 2019)** (**LB) -** this assessment was produced on behalf of the Appellant, submitted with the original application and formed the basis of the landscape chapter within the original Environmental Statement (ES);[338]

ii) **Tyler Grange LVIA (September 2020) (TG) –** TG were first instructed by the Appellant in June 2020, after the application was refused by the Council. This LVIA was submitted for the first time as part of the appeal, and now forms the basis of the landscape chapter within the consolidated ES, replacing the original assessment.[339]

iii) **Jon Etchells Consulting (Since 2019) (JE) –** Mr Etchells has been instructed by the Council on this matter since late 2019. He undertook a short report on the LB LVIA prior to refusal, and then was commissioned to undertake an independent and comprehensive LVIA as part of the appeal.[340]

7.15 It is a striking feature of this appeal that the Appellant has not sought to offer any explanation as to why it jettisoned the services of LB following refusal of planning permission nor, perhaps more importantly, why the conclusions of TG, in respect of both the landscape and visual impact of the scheme, substantially diverge from those of LB.

[337] XX Day 3
[338] CD5.27 (chapter 11.1)
[339] CD8.3 (chapter 11.1a)
[340] CD10.8

7.16 As Mr Etchells pointed out at the end of his questioning by Mr Lopez,[341] it is relevant for the Inspector, and ultimately the Secretary of State, to take account of the fact that there are three LVIAs assessing the development proposals, and that two of them (LB and JE) are generally in agreement, whereas the TG LVIA is entirely out of step.

7.17 The conclusions of each assessment are summarised in Mr Etchells' Appendix D.[342] In summary:

1) In terms of landscape effects on the local area -

i) Both the LB and JE Assessments conclude that the proposal would cause moderate to major/high adverse landscape impacts (year 1). As Mr Etchells explained in evidence in chief[343], although the definitions employed by LB and JE to describe the effects are different, the overall assessments are pitched at a reasonably similar level.

ii) In contrast TG conclude that the landscape effects of the proposal would be less significant than both LB and JE, causing moderate adverse landscape impacts (year 1). It is noteworthy that TG conclude that there would be a lower level of landscape effect than LB notwithstanding that LB assessed the effects across the entirety of the LRFCA, whereas TG were assessing the effects over smaller area.[344] There was no attempt by Mr Hughes to explain this obvious anomaly.

2) In terms of visual effects, the differences between LB and JE on the one hand, and TG, on the other, are even more stark -

i) LB and JE concluded that receptors from a wide variety of locations would experience moderate to major/high adverse visual effects. The only slight difference between them is that whilst JE identifies high adverse effects for users of the Bridleway, LB's assessment is slightly lower, at moderate to major adverse.

ii) In contrast TG's assessment is that visual effects range between minor and moderate adverse.[345] The assessment is particularly out of kilter in respect of users of the Bridleway, where TG suggest that there would be minor beneficial effects.

7.18 The Council submits that the Inspector and Secretary of State should place a significant amount of weight on the assessment undertake by Mr Etchells. He is an experienced landscape professional and a Chartered Member of the Landscape Institute. He has undertaken a comprehensive assessment which follows a transparent methodology. That methodology is consistent with the Guidelines for Landscape and Visual Impact Assessment, 3rd Edition (GLVIA v.3)[346] and was not criticised during his lengthy cross-examination. His assessment is rigorous and supported by reference to published material. He has drawn attention to all relevant parts of the MLCA, and has not sought to

[341] XX Day 2
[342] CD10.3
[343] XX Day 1
[344] What LB termed the Lower Rainham and Lower Twydall Fruit Belt. See Mr Hughes' Appendices, Fig 5
[345] Save for properties along Pump Lane, which would be moderate to major adverse.
[346] Mr Etchells PoE paragraph 2.3.2

selectively quote from that document.[347] His conclusions are well-reasoned, balanced and not overstated.[348] That his conclusions are broadly consistent with those of LB, only serves to underscore the robustness of his assessment and judgment.

7.19 In contrast, there is good reason to question the robustness of the assessment undertaken by TG/Mr Hughes, even before one considers the substance of its content. In addition to being out of kilter with the other two LVIAs, the assessment contravenes the guidance in GLVIA v.3 in a number of respects.

Failure to take account of the worst-case scenario

7.20 It is far from clear that TG/Mr Hughes assessed the impacts of the proposal applying a reasonable worst-case scenario, as GLVIA v.3 emphasises is appropriate.[349] In cross-examination, he freely accepted that the TG LVIA had proceeded on the basis that the development would be limited to 8-10meters in height.[350] This is consistent with the express assumption in the TG LVIA that the height of the development would be limited to respect the existing built form,[351] an assumption which we are told had been taken into account *when assessing the susceptibility and sensitivity of the landscape to the proposed development.*

7.21 However, the Building Heights Paragraphs Plan (PL 004 Rev B) which was being relied upon by the Appellant at the time of the TG LVIA and Mr Hughes' evidence, originally allowed for development up to 12m in height throughout the site, save for the school and village centre. It follows, therefore, that the TG LVIA and Mr Hughes evidence did not take a reasonable worst case approach to the assessment of landscape effects.

7.22 It is no answer to this criticism to suggest that the *intention* was to restrict the height of the development to between 8-10m, even if that intention was reflected in the Design and Access Statement (DAS). It is the paragraph plan, and not the DAS, which is secured by condition. And it is the paragraph plan which, as the name indicates, establishes the paragraphs for any Reserved Matters application.[352]

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[347] It is to his credit, for instance, that he expressly acknowledged that the MLCA categorized the LRFCA as "Urban Fringe" and explained why this was not an accurate reflection of the current landscape character of the area (see Main SoCG paragraph 5.1(15)).

[348] By way of example, see Mr Etchells' conclusion that the long term (ie post Yr 15) landscape effects on the local area would be "moderate". He did not seek to escalate that assessment simply because it accorded with TGs. Rather, he explained why moderate adverse effect on the local landscape character area over the long term should be considered a significant adverse harm, having regard to: (i) the extent of the area affected; (ii) the fact that his scale of effects accommodates all potential developments (including up to, say, nuclear power points; (iii) that the site – which is sizeable of itself – would experience moderate to high adverse effects, even in the long run.

[349] CD3.15 p 50, paragraphs 4.1-4.4

[350] XX Day 3
Question (RW) - "You have in your assessment based the heights of development being limited to respect the existing built form of 8-10m"
Response (Hughes): "Yes 8-10m, as the parameters shows for the development across the site….that is the intention"

[351] CD8.3 (chapter 11.1a) p54, paragraph 6.12

[352] If, at Reserved Matters stage, a proposed building (or buildings) came forward at 12m in height in an area identified on the parameters plan as permitting buildings of that height, the Council could not (acting reasonably) refuse to discharge the application on the basis that the height of the buildings was inappropriate. They could not point to the DAS and say that was not what was intended. Because the approval of the parameters plan at outline stage would have already established the principle that buildings up to 12m in height in that location was acceptable, and this could not be undermined at Reserved Matters stage.

7.23 This does not mean that an assessment must assume, even on a reasonable worst-case scenario, that buildings of 12m in height would come forwards across the entirety of the area identified on the paragraphs plan for buildings of that height. That would not be realistic, and the Council has never suggested as much. But an assessment must, taking a reasonable worst-case scenario, take into account that 12m high buildings *could* come forward *anywhere* within this area (which on PL 004 Rev B was most of the Appeal site). This was the approach taken by Mr Etchells in his assessment.[353]

7.24 In an attempt to meet this criticism during the Inquiry, the Appellant tabled an amended Building Heights Paragraphs Plan (PL 011B), albeit only after the landscape (and heritage) evidence had been given. For the reasons set out in notes to the Inquiry,[354] the Council did not object to the very late amendment of the Parameters Plan.[355]

7.25 However, in an attempt to retrofit the proposal so as to be consistent with TG's assessment, the belated amendments to that Plan does not cure the problem. It does not explain why TG/Mr Hughes failed to take a reasonable worst-case approach in the first place and, in any event, as Mr Etchells explained,[356] the revised Plan still allows for 12m high/3 storey buildings across a large area of the Appeal site, including in the northern, more rural part of the site.

Selective quoting of, and failure to explain departure from, the MLCA

7.26 One of the central purposes of GLVIA v.3 is to ensure that the basis for making judgments on significance of effects '*is transparent and understandable, so that the underlying assumptions and reasoning can be understood by others.'* When assessing the baseline for landscape assessment, the guidance recommends that, as a first step, there should be a review of existing character assessments.[357] In particular it stipulates that '*[j]ustification should be provided for any departure from the findings of an existing, established LCA.'*[358]

7.27 In contrast to Mr Etchells, TG's LVIA failed to draw attention to – and justify any departure from – elements of the MLCA which are of central relevance to the assessment of the existing character and functioning of the local landscape. Most notably the TG LVIA failed to recognise, let alone engage with, with the judgment of the MLCA that the LRFCA has an '*essentially rural character,'* and that the specific area in which the Appeal site occurs is in '*generally good condition with urban influences less apartment.'* This was a highly relevant conclusion in the MLCA in circumstances where the TG LVIA seeks to categorise the site and its surroundings as 'peri-urban' and (as is addressed in greater detail below) this conclusion forms an important component of their analysis of landscape effects.

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[353] Mr Etchells PoE paragraph 5.1.1(b)
[354] ID30a and ID30b
[355] ID30a also debunks the Appellant's contention that it was as a result of the Council's invitation that the Building Heights Parameters Plan (PL 004 Rev B) permitted a large area of the site to have buildings up to 12m in height. However, the question of who was responsible for the building heights shown on PL 004 Rev B is a complete irrelevance. The short point is that any assessment has to be based on the parameters shown on those plans
[356] See his notes attached to ID30a and 30b
[357] *Ibid* pages78-78, paragraphs 5.12-5.15
[358] *Ibid* pp78-78, paragraphs 5.13

7.28 Mr Hughes accepted[359] that it was an omission of the TG LVIA to fail to mention the conclusions of the MLCA on this issue. This is to underplay this serious failure and calls into question the robustness of the assessment. If, as appears to be the case, TG/Mr Hughes' judgment is that the local landscape does not have an essentially rural character, they should have engaged directly with the conclusions in the MLCA, explaining why they departed from them. Instead, they chose to ignore it, selectively citing from those parts of the MLCA which supported TG's judgments.[360]

7.29 Mr Hughes also accepted[361] that it was an omission of the TG LVIA to fail to identify that the MLCA had concluded that there were a number of benefits of the area retaining its essentially rural character, and that these benefits reaffirmed the functions originally identified for the Gillingham Riverside ALLI. In circumstances where the TG LVIA seeks, as part of its assessment, to downplay the impacts of the proposal on those functions, this too was a serious omission.

Hedgerow loss and approach to mitigation

7.30 Finally, GLVIA v.3 stipulates that '*[i]t is essential to demonstrate that any measures included as part of the mitigation proposed to respond to adverse landscape and visual effects can be delivered in practice'*[362] and requires an assessment of whether mitigation is '*technically achievable, practically deliverable, and likely to be sustainable in the future,'* as GLVIA v.3 requires.[363]

7.31 Contrary to that guidance, TG/Mr Hughes have relied heavily on proposed mitigation when arriving at their conclusions on the impact of the proposal, without any assessment (let alone rigorous assessment) of the efficacy of that mitigation.

7.32 While by no means the only instance,[364] the starkest example of the Appellant's approach concerns the landscape mitigation proposed on Pump Lane. Both the TG LVIA and Mr Hughes' proof of evidence placed significant reliance on the retention of existing hedgerows, as well as the introduction of new hedgerows to mitigate the effects of the development on Pump Lane, with the LVIA concluding that '*Ongoing maintenance and new hedgerows would help retain the character of the lane.'*[365]

7.33 However, as Mr Hughes accepted in cross examination,[366] neither at the time the LVIA was undertaken, nor even when the proof was drafted, had TG/Mr

[359] XX Day 3
[360] See, for instance, TG LVIA, page 59, paragraph 7.11 '*As recognised with the MLCA...[there is] poor east to west connectivity'*
[361] XX Day 3
[362] *Ibid*, paragraph 4.38
[363] CD3.15 page 64, paragraph 4.39
[364] Significant reliance is also placed on the establishment of community orchards, without any investigation at the time of the TG LVIA or Mr Hughes' Proof how those orchards would be achieved, delivered or sustained. ID26 was produced in a belated attempt to address this issue. This note can provide little comfort. First, there is no indication of when Mr Hughes started discussions with The Orchard Project – the distinct impression is that it may have only been after the Inspector raised a query about the implementation and management of the Orchards. Second, there is no evidence from the Orchard Project themselves. Third, there is distinct a lack of detail in relation to how the orchards would be implemented and, more importantly, sustained during the lifetime of the development. This is an important issue, given the weight placed on them in TG/Mr Hughes' analysis.
[365] CD8.3 chapter 11.1a) p61. See also Mr Hughes PoE, paragraphs 4.5 and 5.62
[366] XX (Day 3)

Hughes calculated the extent of hedgerow that would be lost on Pump Lane to accommodate the accesses and new road arrangements. This exercise was only undertaken when Mr Etchells raised the issue prior to the Inquiry, in order to secure agreement in the Statement of Common Ground about the approximate extent of the loss.

7.34 Furthermore, and compounding the issue, as ID4 acknowledges, the Landscape Framework Plan (on which the TG LVIA and Mr Hughes relied when considering the effect of landscape mitigation) was based on the Green and Blue Paragraph Plan, which *pre-dated* the detailed junction arrangements for Pump Lane.

7.35 It follows that, as Mr Hughes agreed in cross examination, the conclusion in the TG LVIA that '*the hedgerows and banks along the lane would be managed to retain the character of the lane'*[367] was made without even an approximate calculation of the amount of hedgerow to be lost, or an understanding of the detailed junction arrangements (and therefore, how far back replacement planting would have to be set to accommodate sightlines etc).

7.36 Thus, the Appellant's blithe conclusion that '*the character of the lane would be retained and enhanced',* can be given little, if any, weight. As discussed in greater detail below, the character of Pump Lane would be irrevocably and harmfully changed. However, the important point for now, is that the Appellant's cavalier approach to the effectiveness of the landscape mitigation further serves to undermine the credibility of its assessment.

Landscape Impacts (including impact on Pump Lane)

Mr Etchells' assessment

7.37 The Council relies on, and commends to the Inspector (and Secretary of State) the assessment of Mr Etchells in respect of landscape impacts. This closing does not seek to replicate the detailed analysis undertaken in Mr Etchells' written and oral evidence. Instead, it simply highlights the key conclusions in his analysis, together with cross-references to his evidence.

7.38 As a starting point, it is important to recognise the size of the appeal site, and the extent to which it occupies the ALLI. The site itself is around 1.2km in extent from Lower Twydall Lane in the west to Lower Bloors Lane in the east, and 0.7km from the railway line in the south to Lower Rainham Road in the north. As can be seen from Mr Etchells' Figure 3, the site takes up a significant proportion of the ALLI.[368] Often there is a debate about the extent to which a proposal would affect a designated landscape. Here, by virtue of its size, the proposal would consume much of that designated landscape.[369]

7.39 As Mr Hughes' Figure 5 illustrates clearly, the previously consented developments in the ALLI are almost exclusively located to the east of the Lower Rainham urban extension, which is physically and visually separate from the main part of the ALLI '*which has, and would continue to have, a rural character.'*[370] If anything, the consented development to the east of the Lower

[367] CD8.3 chapter 11.1a) p61
[368] Particularly the main part, excluding the area to the east of the Lower Rainham urban extension which is physically and visually separate.
[369] Mr Etchells PoE, paragraph 3.4.25 and XIC Day 1
[370] Mr Etchells XIC Day 1

Rainham urban extension on the periphery of the ALLI, increases and emphasises the importance of the retaining the remainder as open countryside.[371]

7.40 Although the southern edge of the site is located next to the existing urban area of Rainham, the '*overwhelmingly dominant characteristic of the Appeal site is that it is rural.'*[372] In particular this is because of: (a) the physical barrier of the railway line; (b) the size of the appeal site, such that any urban influence from Rainham is limited to the southern edge of the site; (c) the fact that the settlement of Lower Rainham is a small village in the countryside, not an urban area and Lower Rainham Road is not a particularly urban influence – it is a moderately busy rural road.[373]

7.41 Perhaps unsurprisingly, given the proportion of the character area it takes up, the appeal site exhibits many of the characteristics of the area identified in the MLCA,[374] most notably: (a) it makes a significant contribution to the farmland in the area: (b) it provides virtually all of the "well managed areas of orchard" within the character area; (c) due to its size, the site, is "tranquil in many parts despite enclosure by road to the north and rail to the south" – as Mr Etchells explains, it provides an 'escape' from the urbanising influences, for instance on the bridleway which is "in the countryside and…relatively tranquil"; and (d) the site provides an area of separation between the village and Conservation Area of Lower Rainham and the urban area of Rainham.[375]

7.42 The landscape sensitivity of the appeal site and the local area is medium to high. This is a function of the value of the landscape and its susceptibility to the proposals. The landscape value is medium to high - which derives partly from the landscape quality of the area, but also from the important functions that the landscape plays. The susceptibility of the landscape of the proposed development is also medium-high, reflecting *inter alia* the fact that proposals would extend the urban area beyond the physical barrier of the railway line, across much of the remaining area of currently open countryside between the most the urban area to south and estuary to the north.[376]

7.43 The magnitude of change within the appeal site itself would be high, and for the local landscape around the site would be medium to high.[377] This conclusion is based on a number of factors including:

i) As the development would take up a significant proportion of the ALLI, its role as a '*green buffer…would be fragmented and greatly reduced;'*

ii) The proposal involves the removal of a large amount of orchard, '*a locally characteristic land use as noted by landscape assessments at all scales;'*

iii)The proposed development would '*leapfrog the existing boundary into an area which presently has a largely rural character;'*

[371] Ditto
[372] Ditto
[373] Ditto
[374] CD3.4, p68 'Characteristics'
[375] Mr Etchells XIC Day 1
[376] Mr Etchells PoE, paragraphs 3.5.1-3.5.6
[377] Ibid paragraph 6.2.4

iv) It would '*effectively subsume the village of* [Lower Rainham] *into the expanded urban area*.'[378] It is to be noted that LB shared this view explaining that '*[t]he proposed scheme would increase the settlement envelope of the Twydall and Rainham urban area effectively merging the settlement with Lower Rainham.*'[379] In a belated attempt to counter this point, the Appellants, through Mr Hughes in evidence and Mr Lopez in cross-examination, appeared to argue that Lower Rainham was already part of the urban area, such that the proposal would not extend the urban area any further north. With respect, this contention - which finds no basis in the TG LVIA or Mr Hughes Proof[380] - is nonsense.

v) Pump Lane would lose its presently rural character – a factor which is addressed in greater detail below;

vi) The site would be visible for approximately 1.5km in each direction, and within that area the development would be a '*readily visible and locally dominant feature.*'

7.44 The effect on landscape character would be high adverse for the Appeal site itself and moderate to high adverse for the local landscape area around it. As Mr Etchells explained '*the character of the local landscape would change completely, from being a pleasant, largely rural area dominated by orchards to a new residential area with an urban character.*'[381]

7.45 These levels of effect are significantly adverse. Moreover, significant adverse effects would continue in the long term, even when the mitigation planting is fully grown out, even assuming it is effective. Although on Mr Etchells' assessment, the effect on the landscape character of the site would reduce to moderate to high adverse by year 15, reducing to moderate for the local area, he explained in his evidence why these levels of effect should continue to be considered significantly adverse.[382] On his methodology,[383] both moderate and high adverse effects are considered to be significant. Contrast this with TG/Mr Hughes approach, where only major effects are considered to be significant,[384] leaving the anomalous result that a proposal which '*would cause substantial permanent loss or alternation of one or more key elements of the landscape*'[385] would be considered by TG/Mr Hughes to have insignificant landscape effects.

7.46 Although also part of the overall analysis of landscape impacts, the impact on the character of Pump Lane is a separate issue in its own right, given its designation in the Local Plan as an 'important rural lane' which has the protection of Policy BNE47.

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[378] Mr Etchells explained that the areas of green 'buffering' which are now to be located adjacent to Lower Rainham would be "small open spaces, in a large urban area", and this would not prevent the urban area encompassing Lower Rainham. (XIC Day 1)
[379] CD5.27 (chapter 11.1) paragraph 11.6.168
[380] Mr Hughes PoE repeatedly identifies the existing urban edge as being Twydall and Rainham, and treats Lower Rainham as separate from that urban area. See, e.g. p6, paragraph 1.33(13), p17, paragraph 3.16, p17, paragraph 3.7. In XX Mr Hughes conceded that the existing urban edge was found at Gillingham to the west, Rainham to the south, and Rainham extension to the east [XX Day 3]
[381] Mr Etchells PoE, paragraphs 6.3.3-6.3.5
[382] Mr Etchells XIC Day 1
[383] Mr Etchells, Appendix E, Table 6
[384] See CD8.3 (chapter 11.1a) Appendix 2, Table 5 – notation at the top of the hierarchy.
[385] See TG's definition of moderate adverse effect, CD8.3 (chapter 11.1a) Appendix 2, Table 5

7.47 The new junctions being introduced on Pump Lane would require the removal of around 175m of hedgerow.[386] The layout of the southern junction is such that it would require any replacement planting to be set back significantly. The lane at this point would cease to be narrow, and would no longer be enclosed by hedgerows. The impacts at the northern junction would, if anything, be even more dramatic. The road would be realigned to incorporate two T-junctions, with the effect that the road would cease to a be a 'lane'. As Mr Hughes' agreed,[387] at both junctions, drivers heading north or south would have direct views into (and when turning would be looking directly at) built development. As Mr Etchells explains '*[a]t the moment Pump Lane is a narrow, enclosed land with tall hedges to either side – after these works it would be locally widened, with two new junctions and associated signages, and would have the appearance of a residential access road within a short area.'*[388] In short, Pump Lane would no longer be a rural lane.

TG/Mr Hughes assessment

7.48 Quite apart from the issues of robustness discussed above, TG/Mr Hughes' assessment of landscape effects is undermined by its reliance on three assumptions, all of which are flawed: (i) that the appeal site and the local landscape area has a 'peri-urban' character throughout; (ii) that the commercial orchards are not typical of the traditional character of the fruit belt; and (iii) that the area, including Pump Lane, has distinctive hedgerows which would be retained.

7.49 As became clear during cross-examination,[389] these three assumptions informed every stage of the assessment within the TG LVIA. Each assumption informed the Assessment's conclusion that the landscape had medium sensitivity,[390] that the magnitude of change was medium,[391] and the significance of effect was moderate adverse.[392] None of these assumptions withstands any scrutiny.

7.50 On any fair analysis it is clear that, whilst the southern edge of the site has an urban influence, it cannot be concluded that the entirety of the site, let alone the entirety of the local landscape area, has a peri-urban character. This is contradicted by the conclusions of the MLCA ('*an essentially rural character'*) with which the TG LVIA failed to engage; the conclusions of the LB LVIA (The

[386] ID20
[387] XX(RW) Day 3
[388] Mr Etchells Proof, paragraph 5.1.1
[389] XIC Mr Hughes Day 3
[390] CD8.3 (chapter 11.1a)p26. When concluding on landscape value TG had regard to the "peri-urban context"; the assumption that the *"commercial orchards are not typical of traditional character of the fruit belt"*; and noted the hedgebanks as distinctive features (see Rarity, in relation to Pump Lane itself) (see p22, Table 1). When concluding on landscape susceptibility it explained that the sites was *"within a peri urban context"*; and identified hedgerows as one of the "key landscape sensitivities"
[391] CD8.3 (chapter 11.1a) p58 where the magnitude of change to the landscape character was reduced because the *"LLCA [is] situated within a peri urban context"*; because the *"proposals would not remove characteristic areas of traditional orchards from the local landscape within the fruit belt"*; and because, *"[e]xisting hedgerows….bounding the site,…are to be retained"*. AT p61 this final point is developed specifically in relation to Pump Lane, where it is said that *"[o]ngoing maintenance and new hedgerows will help retain the character of the lane"*.
[392] As the significance of effect is a function of landscape sensitivity and magnitude of change, it is inevitable the case that these assumptions affected the overall judgement on significance of effect. However, lest there was any doubt on p58 when concluding on the significance of impact the assessment reiterated that, in their view, the *"Proposals are situated within a peri urban landscape that is strongly influenced by adjacent urban areas and transport infrastructure."*

site '*predominantly shares characteristics with the wider rural landscape…The proposed residential development would be out of character for the majority of the site'*[393]) with which neither the TG LVIA not Mr Hughes engaged; and Mr Etchells' expert analysis.

7.51 The contention that the commercial orchards are not characteristic of the North Kent Fruit Belt Area such that their removal would not result in the loss of a key characteristic of the area, was plainly untenable. Indeed, in cross-examination,[394] Mr Hughes ultimately conceded that the orchards on the Appeal site *are* characteristic of the area, both the LRFCA and the wider North Kent Fruit Belt Area, and that the commercial orchards were a modern manifestation of the same use which has been ongoing since the 18th Century. His only caveat was that in landscape terms, the quality of commercial orchards is not equivalent to that of traditional orchards. This concession was undoubtedly correct. It accords with the judgment of the other experts who have considered this matter.[395]

7.52 Since the TG LVIA was drafted, it has also become apparent that there would be a significant loss of the distinctive hedgerows on Pump Lane and that, contrary to the LVIA's analysis, the existing rural character of the lane would not be retained. Indeed, Mr Hughes conceded that Pump Lane would not have a rural character where the new entrances are located. His suggestion that it would, nevertheless, retain a rural character on the middle part of the lane between the entrances is fanciful.

7.53 The obvious flaws in three of the key assumptions which permeated all stages of the LVIA means that little, if any, weight can be given to the conclusions of Mr Hughes in respect of the landscape impacts. Mr Etchells' assessment, which is broadly consistent with that of LB, is plainly to be preferred.

Visual Impacts

7.54 The Inspector will reach her own judgments on visual impacts of the proposal, having regard to the photographic material before her and, more importantly, her experience from the site visit. For this reason, the analysis of visual impacts in these closings is far shorter than for landscape impacts.

7.55 The Council submits that the Inspector should prefer the analysis of Mr Etchells in respect of the visual impacts of the scheme, which again is broadly consistent to that of LB, to that of TG. It relies on Mr Etchells analysis in his proof of evidence[396] on which he expanded in his oral evidence.

7.56 TG/Mr Hughes repeatedly underplays the visual impacts of the scheme of this magnitude. In respect of users of the bridleway the visual impacts are not simply underplayed, they are mischaracterised as being beneficial.

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[393] CD5.27 (chapter 11.1), paragraphs 11.6.203-11.6.204
[394] XX Day 3
[395] The orchards were in commercial use when the MLCA was undertaken, and nonetheless the authors of the MLCA plainly considered that the "well managed areas of orchard" were characteristic of the area. The LB LVIA referred to the commercial orchards as being a "key characteristic" of the area. And, as noted above, Mr Etchells considers the orchards to be a characteristic part of the local landscape.
[396] Mr Etchells PoE, paragraph 6.2.1

7.57 Currently, users of the bridleway are aware that they are in the countryside, having left the urban area, as Mr Hughes accepted.[397] Notwithstanding its enclosed nature in parts, users experience close and pleasant views of the orchards (particularly in summer), as well as, in places, longer attractive views down to the Estuary. As Mr Etchells explained in his oral evidence, the proposal would result in '*significant harm for users of the bridleway because their experience would change completely…It is* [currently] *clearly in overall terms a rural experience, where you are walking through the countryside…*[following the development] *you would be forcefully aware of the fact that you were in an urban area.'*[398]

7.58 The suggestion of TG that the visual experience of a user of the bridleway would be enhanced by the introduction of housing on either side of the path for its entire length; by built development replacing a swath of what is currently open countryside; and by the construction of a new road over which users would have to cross, is fanciful.

Impacts on the functioning of the Gillingham Riverside Area of Local Landscape Importance, including the role of the appeal site as a green buffer

7.59 The local landscape derives its importance not simply from the quality of its landscape character, but also the important functions it performs.

7.60 As Mr Etchells explains in his evidence,[399] the proposal would have a significant adverse effect on a number of the functions which both the Local Plan and the MLCA identify the Gillingham Riverside ALLI performing. Indeed, such is the scale of the proposed development relative to the ALLI (and, in particular, the main, undeveloped, section of the ALLI) that it is not hyperbole to suggest that, were the development to go ahead, the ALLI would cease to perform a number of the functions. It is the Council's case that the proposal would cause a significant adverse effect to the following functions:

Important Green Buffer

7.61 This is a spatial function. Its objective is to maintain a buffer, in particular, a 'green,' ie a non-developed buffer, between the built-up areas of Twydall and Rainham and the areas of international importance for nature conservation and recreation along the Medway Estuary.

7.62 The appeal site forms a significant proportion of the ALLI – around 75% of its depth from the edge of Twydall to the estuary at this point - and therefore makes a major contribution to the green buffer function of the ALLI.[400] The proposed large scale of built development across the site, extending from the railway line in the south to Lower Rainham Road, would significantly and adversely affect this function.

7.63 As can be seen from Figure 3 in Mr Etchells' proof, were the development to go ahead, the green buffer between the urban edge and the estuary would be substantially reduced. The remaining area between the urban edge and the

[397] XX Day 3
[398] Mr Etchells XIC Day 1
[399] Mr Etchells PoE, paragraph 6.3.5
[400] Mr Etchells PoE, paragraph 4.3.3

Medway estuary would consist only of one field's width (ie the field to the north of Lower Rainham Road).

7.64 In answer to the Inspector's questions, Mr Hughes accepted that if the Site were developed as proposed '*that green buffer, the physical green buffer….would clearly be removed from being green on the site (apart from the green infrastructure elements).'* This was a belated, but ultimately inevitable acceptance by Mr Hughes that the Site would cease to perform the function of a green buffer at all (the green infrastructure elements within the proposal would provide areas of undeveloped land *within* an urban area. They may be attractive areas. But they would not play a buffering role between the urban edge and the estuary).

7.65 The separation between the urban edge and the SSSI areas – the green buffer - is largely, if not entirely performed by the Appeal site. If the development were to go ahead there would be virtually no green buffer left. It would cause irrevocable and substantial harm to this function.[401]

Allowing attractive views from the river and railway (part of function 2) and Forms a green backdrop when viewed from the Medway Estuary (function 6)

7.66 As Mr Etchells explained, views from both the estuary (in particular Motney Hill and Horrid Hill) as well as views from the railway line would be significantly harmed. Therefore this element of the second function would also be adversely affected by the development.

Providing residents within an extensive urban area with access to an attractive rural landscape

7.67 The proposal may increase access to the area of the appeal site (albeit note the evidence of local residents that historically they have been free to walk through the orchards). However, it would not be through an attractive, rural, landscape. It would be through a housing estate which formed a continuation of the urban area.

7.68 Given that one of only two public rights of way in the ALLI runs through the appeal site (the bridleway) the ALLI would largely cease to perform this function. The ALLI would provide little, if any, opportunity for residents of the urban area to escape into the countryside.

Providing an attractive setting to the Lower Rainham and Lower Twydall Conservation Areas

7.69 As discussed above, the proposal would, in the words of LB, '*effectively subsume the village of [Lower Rainham] into the expanded urban area.'* The settlement of Lower Rainham would largely lose its present independent identity and character. The attracting setting current provided by the ALLI to the Lower Rainham Conservation Area would cease to exist.

[401] The apparent suggestion in cross examination of Mr Etchells (not advanced in any of the proofs of evidence) that there would be no harm to the green buffer function because the proposal would have no direct impact on the nature conservation and recreation within the SSSI should be seen for what it plainly is: an advocate's attempt to avoid a conclusion which is obviously adverse to the scheme he is promoting. It is a bad point. The purpose of the green buffer is not to directly enhance nature conservation or recreation within the SSSI. The purpose is to provide a green buffer between the SSSI and the existing built up area.

7.70 Whilst the ALLI would continue to provide some countryside setting to Lower Twydall Conservation Area, this would be substantially reduced.

Contains Orchards

7.71 The proposal would – at one strike – result in the loss of almost all of the orchards within the ALLI, a key characteristic of the landscape. The limited areas of community orchards proposed – even if deliverable and sustainable – would be negligible as compared to the vast loss of orchards.

Conclusions on functions

7.72 Each and every one of the important functions of the ALLI identified in the Local Plan and MLCA would be significantly harmed by the development. In respect of half of the functions - the green buffer; the attractive setting to Lower Rainham Conservation area; and the provision of orchards – the ALLI's functioning would either cease, or be very substantially reduced.

7.73 Thus, quite apart from the significant adverse impacts they would cause to the character and visual amenity of this valued landscape, the appeal proposals would largely, if not entirely, eradicate the basis on which the landscape was designated within the Local Plan.

AVAILABILITY OF BEST AND MOST VERSATILE AGRICULTURAL LAND, INCLUDING THE LOSS OF THE ORCHARDS

Introduction

7.74 Virtually the entirety of the appeal site, some 51.5ha in total, comprises best and most versatile (BMV) agricultural land. BMV land is considered to be the '*most flexible, productive and efficient in response to inputs and which can best deliver future crops for food….'*[402] 96% of the BMV on the site is classified as either Grade I (Excellent[403]) or Grade II (Good[404]).

7.75 The Environmental Statement[405] concludes that the impact on BMV constitutes a '*direct, permanent substantial adverse effect, which is significant.*[406] The loss of this extent of BMV land of the highest quality is plainly a consideration which would ordinarily carry substantial weight against the proposal.

7.76 The Appellant's main countervailing argument is to contend that the land is not viable for agricultural purposes, either for the orchard use which is currently ongoing, or for other agricultural purposes.

7.77 As both experts agreed,[407] the burden of demonstrating that the land is unviable for agricultural use falls on the Appellant. It is not for the Council to

[402] CD7.8 TIN049, page 2
[403] '*no or very minor limitations to agricultural use. A very wide range of agricultural and horticultural crops can be grown and commonly includes top fruit, soft fruit, salad crops and winter harvested vegetables. Yields are high and less variable than on land of lower quality."* ALC Classification, p9 [CD7.7]
[404] CD7.7 page 9 '*Land with minor limitations which affect crop yield, cultivations or harvesting. A wide range of agricultural and horticultural crops can usually be grown but on some land in the grade there may be reduced flexibility due to difficulties with the production of the more demanding crops such as winter harvested vegetables and arable root crops. The level of yield is generally high but may be lower or more variable than Grade 1.'*
[405] CD8.3 Main Text
[406] *Ibid*, paragraphs 13.66, 13.77and Table 13.6 (pages 170-172)
[407] Mr Lloyd-Hughes in XX); Mr Pelham in XX

prove its viability. It is a burden that the Appellant does not come close to discharging.

Context

7.78 The contention that over 50ha of Grade 1 and 2 BMV land cannot be viably farmed for any purpose is remarkable. Mr Lloyd-Hughes described it as 'unique' – in all his years of experience this was the first time that it had been suggested that a significant area of BMV land was not capable of being viably farmed for any crop.[408] Mr Pelham could not point to any previous example in the planning arena where such a contention had ever been advanced, still less accepted by a decision maker.[409]

7.79 The context in this case makes this argument all the more surprising:

1) A C Goatham & Sons (Goathams) are a substantial and sophisticated operator in the top-fruit market. They operate 29 farms in the North Kent area, operating a 'hub and satellite' model with four of the farms being hubs and the remainder – including the Appeal site – being the satellites.[410] They farm over 2,400ha of land for top fruit, growing over 350 million apples a year and 55 million pears.[411] It can therefore be reasonably assumed that they make investment decisions on an informed basis.

2) Having regard to the following factors, Goathams plainly considered Pump and Bloors Farm (which together comprise the appeal site) to be viable prospects:

i) They purchased the freehold of Pump Farm in 2011. It is reasonable to assume that, before purchasing the freehold of the farm (rather than merely renting it), they would have only purchased the farm if they considered it to be viable. They would have been aware of the characteristics of the site (and its supposed limitations) including its location, size (of the farm as a whole and orchards) orientation of the orchards, and soil quality. As it was already operating as a commercial orchard they surely would have enquired as to the yields it was producing.

ii) Since purchasing Pump Farm, they have reinvested in the site by replanting the orchards twice (4.45 ha in 2011, and 4.45 ha in 2017). Mr Pelham accepted that the replanting costs are not insignificant, and that it is reasonable to assume that Goathams would not have replanted had they considered the orchards to be unviable.[412]

iii) Goathams also illustrated their confidence in the viability of the orchard by purchasing the freehold of Bloors Farm in 2016, expanding orchard production at the farm. At that time they had been operating Pump Farm for five years. Therefore, they decided to purchase Bloors Farm having had half a decade of experience of operations on the

[408] XIC Lloyd-Hughes Day 4
[409] XX Pelham Day 5
[410] Mr Lloyd-Hughes Appendix RLH02, paragraph 4.10 and Figure 4
[411] ibid, paragraph 4.1
[412] XX Day 5

neighbouring farm. It is highly unlikely that they would have made such an investment had Pump Farm been operating at a loss (and no alternative explanation has been given).

iv) It is notable that, on Mr Pelham's evidence,[413] both the replanting of Pump Farm and the purchase of Bloors came after three seasons of hail damage, including the worst year (2014) where apparently 35% of the crop was damaged. This is of relevance given the importance Mr Pelham places on hail damage in his viability assessment. It is inconceivable that Goathams would have replanted Pump Farm and purchased Bloor Farm had they considered that the incidences of hail were so severe as to render orchard farming in this location unviable.

3) It is also highly relevant that Goathams have very recently sought to invest in Gore Farm – and to facilitate its continued use as an orchard - by way of an application for the erection of an agricultural building for secure storage (April 2020).[414] The Planning Statement for that application explained that this building was necessary to '*provide much needed secure storage to support Gore Farm and the applicant's expanding agricultural enterprise….*[and] *would support the ongoing expansion and improved efficiency of a business.'*[415] Gore Farm is approximately 3 miles east of the Appeal site.[416] In terms of its status as a satellite farm;[417] overall size;[418] cropping area;[419] variety of top-fruit;[420] yield;[421] and orchard size,[422] Gore Farm shares very similar characteristics to Pump Farm. In neither his rebuttal proof nor his oral evidence did Mr Pelham seek to explain why, despite the proximity of Gore Farm and the similarity in characteristics, the conclusions of his viability assessment were not equally applicable to Gore Farm.

7.80 Set against this context, it would require very compelling evidence to demonstrate that the use of the Appeal site for orchard farming is unviable.

<u>The viability case</u>

7.81 The Appellant's viability evidence, far from being very compelling, was entirely unconvincing. It is flawed in a number of respects.

7.82 <u>First</u>, despite Goathams having farmed the appeal site for a decade as part of its top-fruit business, the company has produced no financial information whatsoever as to the actual profitability or otherwise of the farm during that time. There is no evidence of direct costs associated with Pump Farm; no

[413] Mr Pelham PoE, page 10, Table 1
[414] Mr Lloyd-Hughes Appendix RLH08
[415] ibid, paragraphs 7.4 and7.5
[416] Gore Farm is c.2-3 miles from the Appeal site (see Mr Lloyd-Hughes Appendix RLH08, F1 – Gore Farm)
[417] Mr Lloyd-Hughes Appendix RLH02, Figure 4
[418] Gore Farm is 50.4ha (RLH08, paragraph 1.3); Pump and Bloors farm is 51.5ha
[419] Gore Farm is 36ha (RLH08, paragraph 1.4); Pump and Bloors farm is circa 44 ha (SoCG, paragraph 1.1and1.4)
[420] Gore Farm produces - Gala, Braeburn, Reuben and Bramley (RLH08, paragraph 1.4); Pump and Bloors farm – Gala and Braeburn
[421] Gore Farm's yield is 6000-7000 bins per annum (RLH08, paragraph 1.4); Pump and Bloors farm – 6,7000 bins per annum (SoCG (CD11.5) paragraph 1.3)
[422] Mr Pelham emphasizes that Pump and Bloors farm has a number of orchards which are 2ha or less. RLH04 shows that Gore Farm has at least 6 individual orchards of less than 2 ha, three of which were replanted in 2018.

evidence of actual overhead costs; no evidence of actual turnover; and no evidence of actual profit or loss.

7.83 Given that the Appellant is seeking to argue that the appeal site is (and would be) unviable for its existing orchard use, this omission is startling. Set against the context outlined above, the lack of any actual financial information from the operation of the site provides a basis alone for rejecting the viability case being advanced.

7.84 It is no answer to this omission to contend that the financial information (or at least some of it) is said to be commercially sensitive. As Mr Pelham accepted, it is a well-recognised principle that viability assessments would be publicly available.[423] This is reflected in the PPG.[424] However, if data is truly commercially sensitive, then this can be provided to a decision maker on a confidential basis. Again, this is reflected in the PPG.[425] It is not unusual for viability assessments to be published, with commercially sensitive data redacted and available only the decision-maker. As Mr Lloyd-Hughes explained, he not infrequently reviews viability assessments on behalf of local planning authorities which contain financially sensitive information.[426]

7.85 Nor is it an answer to suggest that such information was not available because the site forms part of a wider enterprise and cannot be disaggregated. Mr Pelham explained in his evidence in chief that he is often asked by clients to undertake a profit performance of individual farms in a wider enterprise.[427]

7.86 It is telling that, as confirmed in cross-examination, Mr Pelham had not been asked to, nor had, undertaken an assessment of the profit performance of Pump Farm. Most damning of all was his acceptance that whilst he 'suspected'[428] that Pump and Bloors Farm had not produced any profit in the last ten years, he could not be confident of this because he had not undertaken the relevant analysis.[429]

7.87 Second, the theoretical lifetime Gala orchard model on which Mr Pelham placed great reliance is defective, and cannot be given any weight, for a number of reasons:

1) It is purely hypothetical. In circumstances where actually, financial information concerning the running of the farm was available, it is highly anomalous for reliance to be placed on a theoretical model.

2) Apart from an assumption in respect of the soil quality, as Mr Pelham confirmed none of the assumptions on which the model is based are site specific to Pump or Bloors Farm.[430] They would equally apply, he accepted, to the replanting of any of the 29 Farms operated by Goathams, including Gore Farm.[431] Given that Goathams is not contending that any of its other farms are similarly unviable (and quite to

[423] XX Day 5
[424] Should a viability assessment be publicly available? Paragraph: 021 Reference ID: 10-021-20190509
[425] *Ibid.*
[426] XIC Day 4
[427] XIC Day 5
[428] A term he repeatedly used in XIC in chief when describing the existing and historic viability of the Appeal site
[429] XX Day 5 (Youtube recording 5:58:54)
[430] XX Day 5 (Youtube recording 6:09:45)
[431] XX Day 5 (Youtube recording 6:10:45) Subject to achieving a north/south alignment of the orchard

the contrary, are investing in them), this immediately undermines the credibility of the model.

3) Most significantly, the central assumption underpinning the model is entirely unsubstantiated by the Appellant, and is contradicted by the evidence produced by Mr Lloyd-Hughes:

i) The central assumption in the model is that the sale price of the apples would remain '*unchanged throughout the crop lifetime."*[432] ie that for the 16 year period of the model, the sale price achieved would remain static. In contrast the model assumed that costs of production increased annually.[433]

ii) If sale prices are assumed to remain static, and costs of production are assumed to increase annually, at some point the model would show costs exceeding turnover, and therefore a lack of viability.

iii) The assumption that the sale price of the apples would remain unchanged, was said to be '*consistent with past and current evidence*."[434] However, as Mr Pelham stated in examination in chief, he is unable to produce any empirical evidence to support this contention. In cross-examination he confirmed as much, agreeing that he was asking the Inspector and Secretary of State to '*take my word'* that this assumption was correct.[435]

iv) The lack of any empirical evidence to support such an important assumption renders the model devoid of any merit. Even if there were no other evidence before the Inquiry on this subject, the model should be rejected on this basis alone.

v) However, the central assumption is contradicted by evidence produced by Mr Lloyd-Hughes. He produced evidence published by DEFRA concerning the past and current trends in sale prices of apples, including Gala apples.[436] This evidence was criticised by the Appellant because it does not directly represent prices paid by supermarkets. The criticism is true in respect of the second set of data in RLH07, but not the first set, which has been adjusted to reflect the 'farm-gate' price.[437] But this criticism is entirely irrelevant. It is the only empirical data before the Inquiry of the past and current trends of sale prices of apples. And it demonstrates that sale prices rose between 3.33% per annum and 5.12% per annum[438] between 2010 and 2019.

vi) Mr Lloyd-Hughes' evidence demonstrates that, assuming all other assumptions are correct, even a very modest annual price rise of 2% per annum would give rise to a healthy profit, applying Mr Pelham's model.[439] Indeed, it would only require a rise in sale prices of 0.6% per

[432] Mr Pelham PoE, paragraph 6.3
[433] *ibid*
[434] ibid page 21 paragraph 6.3
[435] XX Day 5 (Youtube recording 6:36:00)
[436] Mr Lloyd-Hughes Appendix RLH07
[437] See the metadata in CD7.9a
[438] See Mr Lloyd-Hughes PoE, paragraphs 66 and67 and ID16
[439] Mr Lloyd-Hughes Rebuttal Proof.

annum (well under historic price rises) to render the proposal viable, again even assuming that all other assumptions are correct.[440]

7.88 Furthermore, even with these unevidenced assumptions, Mr Pelham's model shows that the orchard would be viable[441] were it not for an assumption that hail would result in 10.4% of the crop being damaged annually.[442] Despite the importance of this variable, Mr Pelham accepted that he was unable to opine on whether this level of hail damage is likely to occur at the site in the future. Nor was there any evidence to support his implication[443] that the appeal site is particularly susceptible to hail damage, or that it has any greater level of susceptibility than any of the other 29 Kent farms own by Goathams.

7.89 Third, the six arguments advanced by Mr Pelham as to why the Appeal site could not viably be farmed for any agricultural purpose[444] were comprehensively responded to in the written and oral evidence of Mr Lloyd-Hughes. Those points are not addressed in any detail in these closings, and Mr Lloyd-Hughes' evidence is relied on in full. However, the short point that can be made in respect of each of them is that, even if each of the arguments individually had any merit (which they do not) they do not demonstrate a lack of viability. At their very highest, they are characteristics of the site (and in one case the market) which may affect productivity or costs associated with production. They tell the reader nothing about the viability of the enterprise.

7.90 The Council therefore invites the Inspector and Secretary of State to reject the Appellant's viability case. It is patently unmeritorious.

Other considerations – potential need for BMV land

7.91 The Council accepts that a degree of BMV land may be required in order to meet housing needs across Medway. The future *potential* need for BMV land is a relevant consideration in the overall weight to be given to the loss of BMV land in this case. However, this should not reduce significantly – and certainly not eliminate - the weight to be given to this important issue. The Council does not accept that allocated sites in the emerging Local Plan would inevitably involve the loss of this extent of BMV land or this quality, and certainly not a site in active agricultural use, as the appeal site currently is.

7.92 Furthermore, the allocation of sites would be the result of a comprehensive comparison and balancing exercise, which can take account of government policy to the effect that '*areas of poorer quality land should be preferred to those of a higher quality.*'[445] Indeed, as Mr Canavan explained in his evidence in chief, the presence of BMV land is a constraint identified in the Medway Strategic Land Availability Assessment (SLAA) which rules out several sites in part on the basis that they are of Grade 1 or 2 BMV land quality.

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[440] Mr Lloyd-Hughes (XIC) Day 4
[441] Mr Pelham PoE Table 8
[442] ibid, paragraph 6.9-6.10 and Table 9
[443] See Mr Pelham Rebuttal, paragraph 11
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- Operation as a satellite to main hub centres (Flanders Farm, Hoo and Howt Green Farm, Bobbing).
- Size and layout of the existing orchard blocks.
- Lack of suitable buildings.
- Hail damage.
- Increasing costs of production vs 'static' prices.
- Orchard age and varieties.

[445] Framework footnote 53

7.93 Therefore, whilst the Council recognises that this context calls for a reduction in the weight to be given to a loss of BMV land which would otherwise carry substantial weight, this reduction should not be significant. It is for this reason the Council considers that the loss should carry moderate weight in the overall balance.

SIGNIFICANCE OF DESIGNATED AND NON-DESIGNATED HERITAGE ASSETS, INCLUDING THE LOCAL HISTORIC LANDSCAPE

Context

Law and policy: the proper approach

7.94 Where harm is caused to the significance of designated heritage assets, including listed buildings and conservation areas, it is not merely another material consideration to be weighed in the balance. To the contrary, primary legislation[446] establishes a strong statutory presumption against development which causes harm to the significance of either listed buildings or conservation areas.

7.95 It is firmly established in the authorities – and is an agreed between the parties[447] – that this legislation requires decision makers, when carrying out the balancing exercise - to give 'considerable weight and importance' to the desirability of preserving the significance of listed buildings and conservation areas.

7.96 That this approach is required must especially be remembered when a decision maker is applying paragraph 196 of the Framework. This policy has been described, rightly, as a 'trap for the unwary' because although it is expressed as a straight balance between the heritage harm, on the one hand, and public benefits, on the other, the balance is not 'straight'. Whether applying the paragraph 196 balance or broader planning balance under section 38(6) of the Planning and Compulsory Purchase Act 1990, decision makers must apply the statutory presumption, and give considerable weight and importance to the desirability preserving of the significance of listed buildings and conservation areas, in *any* circumstances where harm would be caused to the significance of designated heritage assets.

7.97 Further, it has also been established in case-law – and is again agreed between the parties[448] – that treating a conclusion that there would be "less than substantial harm" for the purposes of the Framework as being a 'less than substantial objection' would amount to an error of law.[449]

7.98 Finally, a striking feature of this proposal is the number of designated heritage assets that would be adversely affected (on either party's case). Moreover, these are not – as is sometimes the case – a collection of designated heritage assets located at one property. As Ms Wedd explains the proposal would

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[446] S.66(1) and s.72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 in respect of listed buildings and conservation areas respectively. These duties have consistently been described by the Courts as giving rise to a "strong presumption" against granting permission for development that would harm the setting of a listed building or the character or appearance of a conservation area. See eg *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council* [2014] EWCA Civ 137, discussed in the Heritage SoCG (CD11.2) paragraph 2.4
[447] Heritage SoCG (CD11.2)
[448] ibid, paragraph 2.5
[449] Barnwell Manor judgement [29]

impact on a 'constellation' of designated heritage assets located throughout the local landscape, including two separate conservation areas.

7.99 The parties are also agreed on the proper approach to paragraph 196 of the Framework when, as here, harm is caused to the significance of multiple designated heritage assets. As Mr Parr agreed in cross-examination[450], a decision maker should not apply the paragraph 196 balance to each designated asset in turn. Instead, a decision maker should apply the paragraph 196 balance once, taking account of the *aggregate* harm to all of the designated heritage assets.[451] Although there is no binding legal authority on this issue, this must be the correct (and certainly lawful) approach. To do otherwise would be to risk a 'death by a thousand cuts', because a decision-maker would never test whether the public benefits arising from a single proposal outweighed the totality of the harm to designated heritage assets caused by the same proposal. To adopt this 'asset by asset approach' would not be consistent with legislative or policy schemes.

A broad measure of agreement

7.100 There is a significant amount of agreement between the parties, and their respective experts, as to the impact that the proposal would have on the significance of designated heritage assets in the vicinity of the site. In particular, it is agreed that:

- the proposal would cause material harm to the significance of a number of designated heritage assets in the local area. Ms Stoten on behalf of the Appellant accepts that harm would be caused to the significance of five separate designated heritage assets,[452] including the Grade II* listed Bloors Place. The dispute in terms of whether any harm occurs at all relates only to York Farmhouse and the outbuildings and Garden Walls at Bloors Place.

- in respect of the five designated heritage assets to which it is agreed harm would be caused, both experts agree that the harm would be less than substantial for the purposes of the Framework. The dispute in terms of the harm caused to these five designated heritage assets is one of degree only. Even then, the dispute is relatively narrow. Whereas Ms Stoten contends that the harm would be either at the lowest or low end of that spectrum, Ms Wedd considers that the harm would be at the middle of the spectrum.

- when assessing the degree to which a proposal which affects the setting and significance of heritage assets, both parties agree that while issues of intervisibility are important, it is also relevant to consider other factors, including the economic, social and historical connections between the asset and its surroundings.[453] This is consistent with the guidance given by

[450] XX Day 9
[451] It is, of course, important not to factor in harm to non-designated heritage assets at this stage, as the paragraph 196 test does not apply to them
[452] Pump Farm House (Grade II); Chapel House (Grade II)
[453] Heritage SoCG, paragraph 3.12

Historic England in GPA3[454] and the approach set out by the Court of Appeal in *Catesby Estates Ltd v Steer* [2018] EWCA Civ 1697.[455]

7.101 There is less agreement in relation to the impact on non-designated heritage assets. That said, both experts agree that there would be harm to Bloors Oasts, albeit less than substantial harm at the lowest end of the spectrum. There is disagreement as to whether the local historic landscape should be considered a non-designated heritage asset and, if so, the degree of harm which would be caused.

Historic England's advice

7.102 It is settled law that the views of Historic England (HE) must be given considerable weight and that cogent and compelling reasons are needed if a decision maker is to depart from them.[456]

7.103 Its letter of 1 August 2019[457] should, of course, be read in full, but the headline points from it are as follows:

i) The agricultural land of the appeal site forms the setting of the Lower Twydall and Lower Rainham Conservation Areas and the listed buildings within them, as well as isolated listed buildings, such as Pump Farmhouse.

ii) The '*distinct settlement pattern of modest hamlets dependent on the surrounding land'* evolved from the historic use of the land – including the Appeal site - for farming. The settlement pattern, which was established in the medieval period, continues to be evidenced today with *"both Lower Rainham and Lower Twydall surviving as modest historic settlements surrounded by arable land."*

iii) Having expressly referred to the guidance in GPA3 to the effect that "*setting is not limited to visual connections and can include…historic association, land use, functional relationships and aspects such as tranquility"*, HE explain that *"[b]oth conservation areas and the listed buildings within them thus derive some significance from their setting which continues to illustrate a historic functional relationship to the surrounding agricultural land and their character as modest rural hamlets"*. HE, therefore, considered that the contribution that the agricultural setting makes to the significance of the assets is not limited to simply a direct visual connection between the two.

iv) HE is firmly of the view that the proposal would cause harm to the significance of both conservation areas, as well as the listed buildings within them. It is worth setting out in full their explanation as to why such harm would be caused:

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[454] CD3.17 See in particular, p2 which states: '*The extent and importance of setting is often expressed by reference to visual considerations. Although views of or from an asset will play an important part, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each.'*

[455] CD4.6

[456] This is trite law and has been confirmed in numerous cases. If citation is needed, see *Regina (Hayes) v York City Council* [2017] EWHC 1374 (Admin) at [92]

[457] In a letter dated 29 March 2021 Historic England confirmed that the amendments to the parameters plan did not fundamentally alter their views, and that their position remained as set out in their letter of 1st August 2019 (ID33)

"Building across large swathes of land which form the agricultural and rural setting to both conservation areas and listed buildings within them would have an impact on the significance these designated assets derive from their setting. A sense of the rural setting afforded to both conservation areas and to buildings like Bloor Place is still appreciable from surrounding roads and pathways and from the train which passes directly to the south of the site… Introducing a large amount of new development would fundamentally alter the historic character of the area. Such new development would inevitably have a presence in a number of views, and change would also be appreciable increased vehicular movements, noise and light pollution. An understanding of the historic functional relationships between the historic hamlets and the surrounding land which they were dependent on would also be compromised. We can only conclude that this would cause harm to the significance of both conservation areas through we think the greater level of harm is to the Lower Rainham Conservation Area which is more directly affected by the development."

It is noticeable that, when considering the impacts on the significance of the Conservation Areas and the listed buildings, HE considers not only direct views from the heritage assets themselves, but also kinetic views that are appreciated when travelling around the area, as well as the non-visual considerations.

v) HE expressly disagrees with the Appellant's assessment in its original ES that there would only be minor adverse harm to the significance of the conservation areas.[458]

vi) It also expressly disagrees with the Appellant's assessment in its original ES that there would only be moderate to negligible harm to the individual listed buildings.[459]

vii) In terms of Bloors Place – which is afforded separate treatment, presumably because of its Grade II* listing – HE explains that '*its relationship to the surrounding fields and its rural setting are important to understand its historic use as a farmhouse and its origins as a rural dwelling"*. They conclude that the development would cause harm to the significance of Bloors Place due to the fact that *"the wider environs in which the asset is experienced would be fundamentally altered by building across it as associated noise and light pollution etc would also likely have an effect.'*

viii) Ultimately, it reiterates its concerns regarding the application on heritage grounds and concludes that the application fails to meet the requirements of the Framework, including paragraph 194, which requires there to be clear and convincing justification for harm to the significance of designated heritage assets.

[458] The replacement ES [CD8.3] increases the level of harm to the Lower Rainham CA to moderate adverse, but maintains that the level of harm to the Lower Twydall CA would be minor adverse (see paragraphs 14.89-14.94 and Table 14.5, p191)
[459] The replacement ES [CD8.3] concludes that the level of harm to the individual listed buildings would be minor to negligible adverse (see paragraphs 14.84-14.88 and 14.109, as well as Table 14.5)

Harm to designated heritage assets

General Approach – Common themes in the Appellant's analysis

7.104 As was evident from Ms Stoten's proof of evidence, and as was underscored in the heritage round table session at the Inquiry, there are several themes running through her assessment which causes her to underassess the harm that would be caused to the designated heritage assets. These including the following:

(1) Undue emphasis on intervisibility – Ms Stoten's assessment places heavy reliance on the intervisibility between the asset and the setting which leads her to underplay other ways in which the Appeal site contributes to significance. A prime example of her myopic approach is found in her assessment of York Farmhouse.[460] She concludes that the Appeal site does not contribute to the heritage significance of the listed building at all, doing so primarily because (in her view) of the minimal intervisibility between the two.[461] In oral evidence Ms Stoten was at pains to emphasise the degree of screening on the boundary of the York Farmhouse site which, in her words, causes a "high degree of separation from the wider landscape.'[462]

Even putting aside that this approach ignores the kinetic views in which both York Farmhouse and the appeal site can be appreciated (such as from walking across the footbridge over the railway)[463], this is to entirely ignore non-visual connections, including: (a) the functional relationship between the two – historically there was a direct functional relationship between the Appeal site and the asset, as Ms Stoten accepts;[464] and (b) the associative relationship – as HE point out, quite apart from the historic functional relationship, '*the survival of this historic farmsteads…[including] York Farmhouse*]" illustrates an "*association with and dependence on the surrounding land.'*

It also ignores that the change from a rural to urban landscape would also be experienced in ways other than direct views, such as by increased vehicular movements, noise and light pollution. Given these factors, the contention, contrary to the views of Ms Wedd and HE, that that the appeal site, and the agricultural land which it occupies, fails to contribute *at all* to the significance of York Farmhouse is untenable. So too is her conclusion that the replacement of swathes of agricultural land with a large housing estate would cause absolutely no harm to its significance.

(2) Modern Commercial Orchards – Ms Stoten repeatedly refers to the fact that the appeal site has a modern commercial character,[465] explaining in her oral evidence that (in her view) the modern orchard had a fundamentally different character from the historic use of the appeal site.[466] This conclusion has caused Ms Stoten to minimise the contribution

[460] Although this flawed approach applied to all of the assets including, for example, Lower Twydall Conservation Area
[461] Ms Stoten PoE, paragraph 6.27
[462] Heritage Roundtable (Day 6)
[463] As Ms Wedd drew attention to in the Heritage Roundtable (Day 6)
[464] Ms Stoten PoEf, paragraph 67.28
[465] This is mentioned 14 times within Ms Stoten's proof of evidence
[466] Heritage Roundtable (Day 6)

that the site makes to the contribution of the heritage assets, on the basis that it no longer exhibits its historic character. This approach is plainly flawed. The appeal site remains in agricultural use - a land use which has been ongoing since the medieval period and which, as HE explains, was the very catalyst for the establishment of the modest historic settlements of Lower Rainham and Lower Twydall, as well as the construction of the listed buildings. The commercial orchard currently undertaken on the appeal site is a modern manifestation of this historic orchard use, which has been ongoing for centuries. It does not diminish the contribution that the site makes to the significance of the heritage assets. Ms Wedd expressed this point forcefully and eloquently in her oral evidence.[467]

(3) Focus on the existing functional association – Ms Stoten further errs by focusing on the lack of any *existing* functional relationship between the assets and the agricultural land on the appeal site. In her proof, she repeatedly downplays the contribution that it makes to the significance of the assets on the basis that any functional association has been severed. The implications of this erroneous approach were illustrated in her oral responses concerning Lower Twydall Conservation Area. Ms Wedd pointed to, and agreed with, HE's characterisation of Lower Twydall as a modest historic settlement surrounded by arable land and its explanation that the Conservation Area (as well as Lower Rainham) '*derive some significance from their setting which continues to illustrate a historical functional relationship to agricultural land and their historical character as modest rural hamlets' (emphasis added)*. Ms Wedd's point was that, as HE recognised, this '*historical functional relationship to agricultural land'* is still appreciated today, notwithstanding that there is no longer any existing functional relationship between the two.

Further, that the undeveloped natural of the appeal site plays a major contribution in maintaining Lower Twydall character as a '*modest rural hamlet.'* Faced with this, Ms Stoten was forced into criticising HE's assessment, alleging that HE was wrong to claim that there is any functional relationship between the agricultural land. But this is not what HE was claiming. Their point – which Ms Stoten ignores, or at least downplays – is that the *historical functional relationship* between the conservation area and the surrounding agricultural land continues to be illustrated by the Appeal site's current, agricultural use.[468]

(4) Narrow focus ignoring the relationship between the widely spaced assets – HE's GPA3[469] explains that setting can be influenced by '*our understanding of the historic relationship between places. For example,*

[467] Heritage Roundtable (Day 6), when discussing Bloors Place. She said in respect of the "modern commercial orchard" issue that *"Ms Stoten and I interpret this in 180 degree opposing ways. We know…that agricultural activity in this area has been going on since the medieval period. We know from…. the Hasted description that there was wheat, corn, apples and cherries being grown in this Parish. And we know that older orchards had been grubbed up. So there was change in the 18th Century. We know from the appearance of the Oast houses…that there were hops grown at some point. This is perfectly normal. Modern commercial orchard is the current manifestation of a long history of agricultural uses. If you had asked any farmer since the agricultural revolution of the 18th Century: are you farming in a modern commercial manner? He would have said, yes of course I am….so the fact that we have* [a modern commercial orchard] *is interesting, it has changed the appearance of the…farmland…. But that does not diminish the contribution that the open undeveloped farmland makes to the significance of the heritage assets."*
[468] See also Ms Wedd PoE, paragraphs 5.13-5.14 where the same point is made.
[469] CD3.17 Page 2

buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each.' Ms Wedd explains how the designated heritage assets in question are not a series of random unconnected assets. Instead, they form a 'constellation of assets,' and it is the undeveloped farmland setting – of which the appeal site plays a major part – that explains the sparse and scattered disposition of these listed buildings and the modest rural hamlets.[470] Ignoring this factor, as Ms Stoten does, is to ignore an important contributor to the significance of the heritage assets. In short, were the development to occur, the undeveloped farmland setting would cease to exist, and with it the value it provides in illustrating the historical basis for the disposition of those heritage assets.

Individual Harm

7.105 Having explored the main reasons for the difference between the two assessments, the Council's case can be addressed relatively briefly. The Council continues to rely on, and commends to the Inspector and Secretary of State, the carefully considered and compelling analysis that Ms Wedd set out in her proof of evidence,[471] as amplified in her oral evidence.

7.106 **York Farmhouse (Grade II) – less than substantial harm, at the low end of that range:** As explained above, the farmhouse has a historical association with and dependence on the surrounding agricultural landscape, which includes the appeal site. This agricultural setting, if not entirely lost, would be very much diminished by the proposed development. Furthermore, whilst direct intervisibility is limited (although the buildings of the appeal site are likely to be visible from the upper floors), the change in setting would be appreciated in kinetic views and, in any event, through non-visual experiential factors (noise, increased vehicle movements etc).

7.107 **Pump Farmhouse (Grade II) – less than substantial, at the middle of that range:** As with York Farmhouse, Pump Farmhouse has a historical association with and dependence on the surrounding agricultural landscape. The impact on significance would be greater because of the direct visual impact the proposal would have – replacing short and mid-distance views of agricultural land,[472] with a swathe of built development; and the fact that the asset would be enclosed on all sides by built development.

7.108 **Chapel House (Grade II) - less than substantial, at the middle of that range:** The impact would be of a similar magnitude to Pump Farmhouse given the proximity between the asset and the appeal site and the potential intervisibility. The construction and operation of the main entrance to the site from Lower Rainham road to the rear of this property would particularly affect its setting and significance.

7.109 **Bloors Place (Grade II*) - less than substantial, at the middle of that range:** Bloors Place is a particularly important designed heritage asset: only 5.8% of listed buildings are Grade II*. Both Ms Wedd and HE explain how the historic relationship with the surrounding farmland and its rural setting

[470] See Ms Wedd Proof, paragraphs 5.9-5.15
[471] Wedd Proof, paragraphs 6.4 – 6.34
[472] See Ms Wedd, Appendices, Fig 9

contribute to the understanding of its historic use as a farmhouse, and therefore its significance. The proposal would eliminate that farmland and rural setting – as with the settlement of Lower Rainham, Bloors Place would be subsumed within the expanded urban area. This would cause considerable harm to the significance of this important heritage asset. This is a good example of where Ms Stoten's assessment underplays the harm due to its undue emphasis on direct visual connectivity,[473] her focus only on existing functional relationships,[474] and her erroneous approach to the existing character of the appeal site (the 'modern commercial orchard' point).[475]

7.110 **Outbuildings and Garden Walls (Grade II) – less than substantial harm, at the low end of that range:** The listed outbuildings, together with the walls, are part of the historic farmstead. Like the farmstead they would be harmed by the loss of the historic, agricultural setting.

7.111 **Lower Rainham Conservation Area - less than substantial, middle of the range:** As noted above, HE explains how the existing use of the appeal site illustrates the historic functional relationship between the Conservation Area and its agricultural surroundings, as well as helping to maintain its historic character as a modest rural hamlet. Both elements would be destroyed by the proposal, which would have the effect of encompassing the Lower Rainham Conservation Area within the expanded urban area. There would be little, if any, of agricultural surroundings left to explain the settlement's historical inception and it would no longer would it have a character of a modest rural hamlet. In that context, Ms Stoten's assertion that the harm would be at the lowermost end of the spectrum - is simply untenable. Indeed, her conclusions are undermined by the fact that the Appellant's own ES now concludes that the proposal would cause moderate adverse effects to the significance of the Lower Rainham Conservation Area.[476]

7.112 **Lower Twydall Conservation Area - less than substantial, middle of the range:** Whilst the impact may be slightly less dramatic, for similar reasons to Lower Rainham, the heritage significance of the Lower Twydall would be adversely impacted.

Aggregate Harm

7.113 Relying on Ms Wedd's assessment, the Council considers that the aggregate (or cumulative) harm to the significance of these designated heritage assets – six listed buildings and two conservation areas – would be less than substantial, in the middle of that range. For the reasons set out in her evidence, and summarised above, the Council contends that this is the appropriate level of harm for the Inspector and Secretary of State to apply when undertaking the paragraph 196 and general planning balances.

7.114 We say that this conclusion accords with the assessment of HE, who expressly rejected the suggestion that the harm to even individual designated heritage assets could be characterised as minor.

[473] Ms Stoten PoE, paragraph 6.146
[474] ibid, paragraph 6.148
[475] ibid, paragraph 6.151
[476] CD8.3, see paragraphs 14.89-14.94 and Table 14.5, page 191.

7.115 Ms Stoten fails to provide a level of aggregate harm. This is somewhat anomalous given that Mr Parr, the Appellant's planning witness, agreed that in order to apply the paragraph 196 balance it is necessary to consider the aggregate all of the harms designated heritage assets affected (and indeed, this is the approach he purported to have taken in his proof of evidence). However, even if, contrary to the Council's case, the Inspector or Secretary of State were to adopt Ms Stoten's conclusions in respect of the individual assets, on any logical approach the *aggregate* harm caused by the proposal to be designated heritage assets must be greater than '*less than substantial harm at the low end of that range*.'[477]

Harm to non-designated heritage assets

7.116 There is agreement between the heritage experts that Bloors Oasts is a non-designated heritage asset and that the proposal would cause harm to the significance of the asset, albeit that harm would be of a low scale.

7.117 The experts disagree as to whether the local historic landscape is non-designated heritage asset, although they do agree, rightly,[478] that landscapes are *capable* of being a heritage asset. Ms Wedd explains,[479] in cogent and clear terms, why the historic sequence of river, wharfage and estuarine land (to the north of the site) farmland and related development (of which the appeal site forms an important part) and suburbia (to the south of the site, and beyond the physical and psychological barrier of the railway line) constitutes a heritage asset in its own right. She also describes how the development would, in one fell swoop, eradicate that historical sequence and '*erode the historical character of the landscape to the point at which it would cease to be a heritage asset in its own right."*[480]

7.118 The suggestion by Ms Stoten in her oral evidence that Ms Wedd's analysis was undermined by her failure to identify specific boundaries to the asset is misconceived. First, it is a false premise: there is nothing in guidance which indicates that historic landscapes can only be considered heritage assets if they have a precisely defined border. It is in the nature of landscapes (and therefore in landscapes which amount to historic assets) that their edges are often undefined, with one landscape blending into another. Second, and in any event, when asked to specify the boundaries of the asset Ms Wedd was able to explain what she considered the boundaries of the historic landscape to be, with reference to physical features on the ground.

CAPACITY AND SAFETY OF THE LOCAL HIGHWAY NETWORK

Existing Context

7.119 There can be no doubt that parts of the local highway network are already heavily congested. Representations from local residents, as well as from the local MP, have emphasised as much. In his oral evidence Mr Tucker (apparently in an attempt to down-play the traffic impacts of the proposal

[477] If not, this would mean that the proposal would have been be assessed as causing the same level of harm if it only affected, say, Pump Farmhouse, which Ms Stoten assessed as suffering from less than substantial harm at the low end of that range. This would fail to acknowledge that the harm caused by this one proposal is not just to one heritage asset – it causes (even on the Appellant's case) harm to a multitude of designated heritage assets.
[478]

[479] Ms Wedd PoE, paragraphs 2.19-2,21, and 5.16-5.25
[480] ibid 6.38-6.47

itself) appeared to accept that the existing conditions as being congested[481], and acknowledged that queuing already occurred at junctions.[482] Moreover, the 2028 reference case – which the Appellant accepts is credible and accurate[483] - shows that, even in the 'without development' scenario, a number of junctions would be operating at, or over, capacity.[484]

7.120 Applying national policy,[485] this alone would be capable of providing a reason for refusing the development unless the development were to provide mitigation to overcome the severity of the existing situation.[486] It does not.

7.121 The proposal would generate a significant amount of additional vehicular traffic on the local highway network. The Council contends that there would be an additional 800 two-way trips in the AM and PM peaks (13 additional trips *every* minute). On the Appellant's figures, which are unrealistically low for a development of this size – there would be almost 600 additional two-way trips in the AM and PM Peaks (10 additional trips *every* minute).[487]

7.122 Even accounting for the off-site highway mitigation proposed (including the additional highway mitigation proposed mid-way through this Inquiry) the proposed development would significantly exacerbate the situation on the local highway network, with a considerable worsening in the operation of a large number of junctions; a significant deterioration in congestion on the highway links; and substantial increases in travel times on corridors such as the A2, A289 and Lower Rainham Road.

7.123 Moreover, it is of some significance that, as Mr Jarvis explained in his evidence, the local highway network impacted by this development incorporates two of the key east-west arterial routes in Medway: the A2 and the A289 Pier Road. This is important in at least two respects. Firstly, it means that the adverse impact of the proposal would be experienced on routes, and junctions on those routes, which are of critical importance to the functioning of the local highway network. Secondly, the limited options for crossing the River Medway means that, should these routes become gridlocked during peak hours – as the Council contends would occur if this development is permitted – then there would be little, if any, opportunity for traffic to be absorbed on alternative routes (as the microsimulation modelling demonstrates).

Policy Approach

National Policy

7.124 Paragraph 108 of the Framework provides, as relevant:

'In assessing…specific applications for development, it should be ensured that:

….

[481] See XIC Day 13 (Youtube recording 6:25:50 and 7:36:25)
[482] XX Day 14 (Youtube recording 6:43:25)
[483] XX of Mr Jarvis Day 11 (Youtube recording 5:35:00 onwards). Confirmed in XX of Tucker Day 14 (Youtube recording 4:47:20)
[484] See ID35 Table 1, which shows two junctions operating at LoS F in the reference case.
[485] Framework paragraph 109
[486] See CD4.8 Appeal Decision: Land at Kidnappers Lane, Leckhampton and the summary of Holgate J's refusal to grant permission to proceed with a judicial review challenge of the decision at Mr Rand's Appendix C, pp51-53
[487] See ID34a, p10 Table 2

c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.'

7.125 Paragraph 109 then provides:

'Development should only be prevented or refused on highways grounds if there will be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.'

7.126 In *Gladman Development Limited v Secretary of State for Housing, Communities and Local Government* [2021] EWCA Civ 104, Lindblom LJ reminded us of the proper approach to interpretation of planning policy, including that found in the Framework:

*"Policy is not statute, and ought not to be construed as if it were. As Lord Carnwath observed in Hopkins Homes Ltd. (at paragraph 24), not all planning policies lend themselves to a rigorous judicial analysis. Where they do require interpretation, this should be done objectively in accordance with the language used, read in its proper context (see the judgment of Lord Reed in Tesco Stores Ltd. v Dundee City Council [2012] P.T.S.R. 983, at paragraphs 19, 21 and 35). A sensible approach should be adopted in seeking the true sense of the policy in question. The courts should not encourage unmeritorious claims based on intricate arguments about the meaning of policy. They should resist the over-complication of concepts that are basically simple (see East Staffordshire Borough Council, at paragraph 50).' (*emphasis added)

7.127 This approach holds true for the test of severity found in Framework paragraph 109. It is a basically simple concept which should not be over-complicated. The Council submits that, in applying this test, the Inspector and Secretary of State should approach that test having regards to the following principles:

- The test is plainly context specific. A delay or queue at a junction or on a link which may be considered severe in one context, may not in another;
- Any invitation to draw bright-lines as to what is – and what is not – capable of constituting a severe residual cumulative impact should be resisted, when the policy itself does not define severity nor seek to draw such lines;
- The term 'residual' indicates that the focus should be on the impact post-mitigation: both that proposed as part of the scheme under consideration, and that which has been secure elsewhere and is likely to come forward within the relevant timeframe.
- As Mr Rand explained, the term 'cumulative' can be considered to have a duality of meanings:
    i) First, the decision-maker should not simply focus on the impact of the development in isolation. That impact cannot be divorced from the existing context into which it is to be inserted. It is the cumulative effects of all expected development which must be considered, having regard to that context. This principle was well-illustrated in the

Leckhampton decision[488] and the subsequent refusal by the High Court to grant permission to challenge the decision.[489]

ii) Secondly, the decision-maker should have regard to all material effects and determine whether, cumulatively, the impact is severe. Thus, for example, a decision-maker might consider that a single junction operating at or over capacity does not constitute a severe impact (particularly if that junction is not of strategic importance), but that, when considered cumulatively, with impacts at other junctions and links, there is a severe impact.

- When paragraph 109 is read in context with paragraph 108(c) it must follow that that network *capacity* and *congestion* are both relevant considerations when applying the severity test.
- It is also clear from these paragraphs that impacts on the road network "*in terms of capacity and congestion"* are treated separately from highway safety and are plainly a concern in their own right.

7.128 The Appellant has advanced an approach to the severity test which should be resisted. It is not hyperbole to suggest that adopting their approach would amount to a misinterpretation of policy, and an error of law. It is flawed in a number of respects.

7.129 Firstly, the contention that impacts on a highway network in terms of capacity and congestion cannot, of themselves, trigger the severity threshold in the Framework (ie unless they give rise to some other 'harm', such as in terms of highway safety, amenity, or air quality etc) paragraph 109 is plainly wrong. This is for the following reasons:

i) The wording of paragraphs 108 or 109 Framework provide no support for the proposition. The Appellant's approach would constitute an impermissible re-writing of the policy. Had those drafting the Framework wished to restrict the application of the severity test in such a manner, they would have said as much;

ii) As Mr Tucker accepted in cross-examination,[490] and is plainly correct, effects on the network in terms of capacity and congestion can constitute a significant impact in their own right for the purposes of Framework paragraph 108. It is when this threshold is reached that consideration must be given to providing cost-effective mitigation. It would be wholly perverse if capacity and congestion on a network was capable, in and of itself, to trigger the "significance" threshold in paragraph 108, but was not

[488] See CD4.8 (Leckhampton) where the Inspector explained that the Framework referred '*not to the additional impact of the scheme, as the appellant asserts…but to residual "cumulative" effects, implying it is the cumulative effect of all expected development which must be taken into account, rather than the individual contribution of each development…'* at [223] and went onto note that '*the existing or future "in any event" situation on the highway network, is not an unrelated problem which evaluation of the proposed development should ignore. It is a related problem which is highly pertinent to the evaluation of the current appeal proposal.'* [225]

[489] Mr Rand Appendix C pages 52-53) where the judge is recorded as having observed '*that it would be open to a decision taker to rationally conclude that a given development could wash its own face in highway impact terms, but due to existing over capacity, the residual cumulative impacts of the development could be severe*.' It is important to remember that this taken from an article recording the comments of Holgate J at a permission hearing and must be read in that context. The important point is that the principle being espoused is plainly correct.

[490] XX Day 14

capable in its own right of triggering the "severity" threshold in paragraph 109;

iii) Paragraph 109 establishes a separate threshold in terms of highway safety ('unacceptable'). As such, it cannot rationally be contended that capacity and congestion can only give rise to severe impacts if they were to cause highway safety concerns – because a different standard applies when highway safety issues are in play.

iv) Contrary to the contention of Mr Tucker, *Land at Pinn Court Farm*[491] does not establish a general principle which is applicable to this case[492]:

- Firstly, and as ever, the specific factual context is all-important. In that case, the main concern of the Highway Authority was in relation to the increase in queueing at one junction only, with the potential consequence that this would extend beyond the entrance of that appeal site.[493] It was in that context that the parties '*agreed that an increase in queuing may be inconvenient but that in itself would not provide the necessary justification to refuse permission.'* It is perverse to suggest, as Mr Tucker does, that because it was agreed between the parties in that particular case that issue of concern was not the extent of the queue at the one junction, but the effect of queuing on driver behaviour at the site access, that issues of congestion and capacity can never trigger the severity test.[494]

- Secondly, and in any event, *Land at Pinn Court Farm* concerned the 2012 Framework, not the 2019 iteration. In contrast to paragraphs 108 and 109 of the 2019 Framework, with which we are concerned, paragraph 32 of the 2012 Framework made no express reference to the concepts of congestion or capacity. Thus, even if the case did purport to establish a general principle, it is not one which is applicable to the proper interpretation of 2019 Framework.

v) Finally, there are numerous examples, even in the appeal decisions before this Inquiry, of Inspectors proceeding on the basis that impacts on the local highway network in terms of capacity and congestion alone (ie without giving rise to any other harms) were capable of triggering the severity threshold. The *Leckhampton* decision is but one example.[495]

7.130 Second, the suggestion, both in respect of paragraph 109 of the Framework and Local Plan policy T1, that the impacts must be assessed relative to the entirety of the highway network in Medway (such that the fact that the proposal would have no material impact on the road network in the Hoo

[491] CD 4.14
[492] It should be noted that Mr Tucker only sought to rely on this decision at rebuttal stage, having read Mr Rand's proof of evidence, and in particular the Hartnell's Farm decision (Mr Rand Appendix B) which refers back to Land at Pinn Court Farm. One may ask, rhetorically, why, if this was an interpretation of the severity test Mr Tucker had always advanced, this was not to be found in the TA, Planning Statement, Statement of Case or his original proof.
[493] CD4.14, IR 182
[494] It is also of some significance that, whilst the inspector had the regard to the potential for severe residual transport impacts if no mitigation was forthcoming, he ultimately concluded that there would be no such residual impact concluding that there was a likelihood of adequate mitigation being provide in one form or another, having regard to the highway proposals already in train. See CD4.14 193-194
[495] CD4.8 See SoS paragraph 14 and IR221-238. Note the reference to changes in driver behaviour in IR231 refer to the potential for re-routing as a result of the congestion; and are not separate highway safety concerns being raised

peninsula, for example, must be take into account as a countervailing factor) is a lawyer's point.

7.131 The suggestion was first made by Mr Lopez in cross-examination of Mr Rand, without having been foreshadowed in any of Mr Tucker's three proofs. Mr Tucker, presumably out of deference to Mr Lopez but apparently without any critical analysis, picked up the baton and ran with it in his oral evidence.

7.132 The 'road network' referred to in Framework paragraph 109 is not defined. Again, it is left to the decision maker to determine, in the context of the case, what the relevant road network constitutes. There is nothing in policy to require decision makers to assess severity against the entirety of the road network in the administrative area. Indeed, adopting such a rigid approach would be perverse, because doing so has the potential to be both over-inclusive, and underinclusive at the same time.

7.133 It is likely to be over-inclusive because such an approach would prevent the severity test from being triggered in respect of virtually all proposed developments. Indeed, in response to the inspector's insightful questions, Mr Tucker was forced to postulate that proposals of the size of a new settlement, or the cumulative effect of proposals for housing growth in a Local Plan context, as being the only examples where the severity threshold would be triggered when assessed against the Medway highway network as a whole. This wholly unrealistic situation gives lie to the Appellant's approach. Given that paragraphs 108 and 109 of the Framework are applicable to development management decisions,[496] it cannot be correct to approach the test of severity in such a way which restricts its application only to new settlements or to the Local Plan process.

7.134 At the same time, such an approach also has the potential to be under-inclusive, because if one was artificially restricted to the highway network of the Medway, there is the potential that significant – and potentially severe – effects on the highway network of neighbouring authorities would be ignored.

7.135 Moreover, the Appellant's approach finds no support in the appeal decisions before the Inquiry, where the issue of severity has been considered in relation to impacts at single junctions[497] or corridors,[498] without any suggestion that the test had been applied relative to the entirety of the authority's network.

7.136 Finally, Mr Tucker invited the Inspector, when applying the severity test, to 'balance' any harm caused in respect of impacts on the highway network (paragraph 108(c)), against the fact that a safe and suitable access had been provided (paragraph 108(b)) and that appropriate opportunities had been taken up to promote sustainable transport modes (paragraph 108(a)). Again, adopting such an approach would be erroneous. Framework paragraph 108 establishes three objectives, each of which is required to be met, the third of which requires decision makers to consider whether any significant impacts from the development on the transport network in terms of capacity and

[496] Framework paragraph 108 ('specific applications for development'); paragraph 109 ('Development should only be…refused')
[497] E.g. *Land at Pinn Court Farm (*CD4.14) focused primarily on the impact on ne junction only
[498] E.g *Hartnell's Farm* (Mr Rand Appendix B) focused on the A3259 corridor, and specifically two junctions on it. In *Leckhampton* (CD4.8) the focus was on the A46 Shurdington Road

congestion have been mitigated to an acceptable degree. If, notwithstanding any mitigation, the residual cumulative effect in terms of capacity and congestion remain severe, the objective is not satisfied as the significant impacts would not have been mitigated to an acceptable degree. It is no answer to point to the fact there is no objection to the proposal in respect of the first two objectives. This does not render the residual cumulative effects on the road network any less severe.

Policy T1 of the Local Plan

7.137 Policy T1 provides, as relevant:

> *'In assessing the highways impact of development, proposals will be permitted provided that:*
>
> *(i) The highway network has adequate capacity to cater for the traffic which will be generated by the development, taking into account alternative modes to the private car.'*

7.138 The Council disagrees with the Appellant's belated contention that this establishes a lower standard than the severity test in the Framework.[499] It does so because the 'adequacy capacity" test in Policy T1 begs the question as to what is adequate. The policy leaves this to the judgment of decision-makers. Decision-makers applying national policy will conclude there is adequate capacity unless residual cumulative effects on the road network would be severe. Thus, the flexibility provided by policy T1 is capable of accommodating, and being applied consistently with, Framework paragraph 109.

Credibility, accuracy and appropriateness of the transport modelling

Overview

7.139 There are two models before the Inquiry which seek to assess the residual cumulative impacts of the proposal on the highway network. The first model – the Medway Aimsum Model (MAM) is a sophisticated model which operates at both macroscopic and microscopic levels simultaneously. It has been designed, *inter alia,* with the specific purpose of assessing '*the impacts of specific development sites.*'[500] It validates extremely well across multiple measurements against a very broad observed data set. Both its base model, and the future reference cases (which assess the future 'without development' scenarios in 2028 and 2037) have been approved by Highways England.[501]

7.140 The functionality of microsimulation, in particular the ability to assess complex traffic interactions between junctions, as well as links and junctions ('blocking back'); to take into account any issues caused on links themselves (eg from pedestrian crossings, bottlenecks etc); and to replicate 'real-life' vehicle behaviour (such as lane changing behaviour), means that it more accurately reflects likely network performance than traditional isolated junction modelling.

[499] It was originally agreed between the parties that Policy T1 was consistent with national policy and up to date. This was recorded in the Policy Position Statement agreed at the request of the inspector. It was not resiled from by Mr Parr when giving planning evidence. It was only resiled from on the penultimate day of the Inquiry, after Mr Williams had pointed out that the line of questioning advanced by Mr Lopez was inconsistent with the agreed position.
[500] CD12.4, paragraph 2.1
[501] Mr Jarvis XIC. See also Mr Jarvis PoE, Appendix D (in relation to the base model)

Furthermore, it provides outputs, such as corridor journey time analysis, which both allows the model to be validated across sub-networks and particular routes, but also enables decision-makers to assess the overall impact of a scheme on the highway network. The use of microsimulation modelling is particularly apposite in the current context: a proposal for a strategic development, which on any account would generate a significant number of additional vehicular traffic in an urban environment where the local highway network, including key arterial routes, is already heavily congested.

7.141 The second model – isolated junction modelling – is relied upon by the Appellant. Whilst the modelling products (LinSig and Arcady) are well known, and are regularly used in transport modelling, there are significant shortcomings which fatally undermine both their credibility and accuracy in the instant case. Most crucially, the only output against which the Appellant has sought to validate their modelling – queue length – demonstrates that the modelling performs extremely poorly when compared to observed conditions. The validation results should have set alarm bells ringing for the Appellant's highways team, and led them to reassess their modelling. It is of some concern that, instead of doing so, Mr Tucker sought to downplay – and frankly misrepresent – the validation results in his evidence. The validation results alone undermine the credibility of the isolated junction modelling results.

7.142 However, even putting concerns in relation to validation aside, the simplistic nature of isolated junction modelling means that it could never fully capture the traffic impacts of this scheme. It is unable to take account of the complex interactions between junctions (and other causes of delays on links) which regularly occurs in a congested urban environment. Nor can it account for the diversionary impact of the development traffic. And it pays no regard whatsoever to delays caused by issues on the links between junctions.

7.143 It follows that isolated junction allows only for a partial assessment of the impact of a development proposal on the local highway network. Thus, even if its base model validated appropriately – which plainly does not – the MAM results are to be preferred as providing a more realistic assessment of the likely effects of the scheme.

7.144 Given the importance of the credibility and accuracy of the modelling both to this appeal and beyond (the MAM has been also developed for assessment of the highway network to underpin the Local Plan; and is used regularly by Medway to assess the high impacts of major proposals), this closing now turns to consider these issues in greater depth.

Credibility of the MAM

7.145 The credibility of any highway model hinges on how well it validates. That is, how well the base model outputs compare to observed data. Mr Tucker accepted that validation was a crucial part of the modelling process. When asked whether this was true of isolated junction modelling, as well as microsimulation modelling, he responded that it was absolutely the case.[502] During his cross-examination also Mr Jarvis also explained why it was fundamental that highway models validate well against observed data.[503]

[502] XX(RW) Day 14
[503] XX(JL) day 12 (Youtube recording 12:53:30)

7.146 In both his original and rebuttal proof of evidence, Mr Tucker's attack on the credibility of the MAM modelling centred on his contention that it did not validate appropriately. He referred to, what in his view, were '*significant and undermining shortcomings in model validation."*[504] It was because of these alleged shortcomings in model validation that the inspector was invited to prefer the evidence base of the Appellant.[505]

7.147 This criticism was entirely misguided, as is demonstrated by Mr Tucker's very belated withdrawal of his contention.[506] The contention that the model did not validate appropriately should never have been made. It was based on a selective reporting of the validation report,[507] a wilful refusal (in written evidence at least) to acknowledge that the DfT criteria for validation had been met in full; and a failure to enquire of the Council whether any further local validation had been undertaken.[508]

7.148 To the contrary, the Inspector and Secretary of State can record that the MAM base model validates extremely well, and is fit for purpose, having regard to the following:

- The MAM was calibrated and validated at both macroscopic and microscopic levels so as to enable *inter alia "detailed local impacts of proposals anywhere with Medway to be considered"*.[509]
- It was validated against a *"comprehensive dataset of existing and new traffic counts and journey time data"*[510]. This included over 150 Automatic Traffic Counts (ATC), which ran over a 14 day period, and over 110 Manual Classified Traffic Counts, on single days (MCTC).[511] Unsurprisingly, given the importance of the two arterial routes, both the A2 and A289 in the vicinity of the site were very well accounted for in these traffic counts.[512]
- As the MAM validation report concludes[513], both the macroscopic and microscopic modelling passed the DfT criteria for validation as set out in the TAG Unit 3.1 guidance.[514] It met – indeed far exceeded – the requisite criteria against each of the three required measurements: (i) assigned flows and counts for each screenline[515]; (ii) flows and counts on individual links and turning movements at junctions;[516] and (iii) journey times along routes.[517]
- Highways England have approved the MAM validation report.[518]

[504] Mr Tucker Rebuttal (CD10.13) paragraph 3.5. This was not an isolated criticism. See also his PoE at 6.4.4, 6.7.4
[505] See Mr Tucker Summary Proof (CD10.4) paragraph 2.11p2.12
[506] Mr Tucker 2nd Rebuttal (ID36), and his XIC. Subject to two minor lingering concerns he raises, both of which are baseless.
[507] CD12.4 See Mr Tucker Poe, paragraph 6.4.3-6.4.5 and XX(RW) Day 14
[508] Having had the validation report for well over a month, Mr Tucker wrote to the Council in early December following my request that the Appellant set out in writing any further information that was required in relation to the highways modelling. No request was made to be provided any further information regarding validation of the model, and specifically no request was made to see any local validation results.
[509] CD12.4 MAM Validation Report, p77
[510] *Ibid*.
[511] ibid, pp17-18 This does not take account of the Highways England locations
[512] ibid Fig 11 and Fig 12 (pp96-97)
[513] ibid, p77, Section 10.2
[514] Mr Tucker Appendix ST6
[515] CD12.4 MAM Validation Report, p64-65
[516] ibid, p66-68
[517] ibid, p70-76
[518] Mr Jarvis Appendix D. See also Medway Guidance Note (Jan 2018), paragraph 7 (Mr Jarvis Appendix A)

- Further local validation of the microsimulation model has been undertaken of the three subnetworks (in accordance with the recommendation in the MAM Validation Report).[519] This was recorded in Mr Jarvis' original proof of evidence[520] with further details given in his rebuttal proof.[521] This shows that, on a number of metrics, the MAM model validates extremely well. In each subnetwork both the turns and links/sections at junctions, and the journey time analysis was closely aligned to observed data, well in excess of the DfT criteria.
- Mr Jarvis – who has considerable experience of macro and microsimulation modelling, including the validation of such modelling – explained in his oral evidence that meeting the DfT criteria was very difficult, and that it was frequently the case that models in urban areas did not meet all of the criteria. He emphasised that given the MAM does not simply meet, but exceeds, all of the criteria at the macro, micro and local levels, this demonstrates that it is very well validated. This was not an instance of Mr Jarvis 'marking his own homework' – it was Fore Consulting who developed the base-model.[522]
- The use of the MAM is not novel: it has been used to assess the traffic impacts of other sizeable schemes in the Medway area,[523] and it is currently being used to test the cumulative impact of proposed allocations in the emerging Local Plan. Outside of Medway, microsimulation modelling (including Aimsum models) is regularly used by local highway authorities. Indeed, Mr Tucker has previously instructed Fore Consulting to produce an assessment of an individual scheme based on SAMM, Sheffield City Council's version of MAM.

7.149 The Council therefore invites the Inspector and Secretary of State to find that the MAM validates extremely well when compared to a broad range of observed data across a range of metrics. This is one of the key reasons why the MAM assessment should be found to be credible and should be preferred over the isolated junction modelling.

7.150 Whilst Mr Tucker largely withdrew his criticisms of the validation of the MAM, he did have some lingering, minor concerns. On analysis, these concerns are baseless, and his continued advancement of them simply serves to underscore Mr Tucker's steadfast refusal to believe that the MAM outputs could be accurate:

1) First, the residual concern Mr Tucker raises in relation to the validation of journey times on Route 6A in the AM Peak has been proven to be entirely misguided.[524] Mr Jarvis explained (and Mr Tucker did not dispute) that the divergence in the modelled and observed journey times on this route occurred on the eastbound approach to the Four Elms roundabout on the Hoo Peninsula, far removed from the subnetworks with which we are concerned. Moreover, as has been noted above, both subnetworks 2 and 3 (which represent that part of

[519] CD12.4 MAM Validation Report, p78
[520] Mr Jarvis PoE, paragraph 4.6 and Table 2
[521] Mr Jarvis Rebuttal (CD10.16) paragraphs 2.6-2.13, Tables 1-5
[522] XIC(RW) Day 11 (Youtube recording 1:37:00)
[523] See Mr Jarvis PoE, paragraph 4.3 and 4.5
[524] Mr Tucker's Second rebuttal (ID36) paragraph 2.5 and 1st Rebuttal (CD10.13) Appendix REB1

Route 6A in the vicinity of the site) validate well – and in accordance with the DfT criteria – both in respect of journey times and turn/links at junctions. Accordingly, Mr Tucker's concern about the Route 6A journey times is of no relevance to the credibility of the MAM assessment in this case.

2) Second, the contention that the validation routes in subnetwork 3 are shorter in length than recommended in the DfT guidance is misconceived. That ignores the context. The 3km guidance is directed to the validation routes when validating models as a whole.[525] This was the exercise undertaken in the Model Validation Report. The guidance goes on (in paragraph 4.3.4) to explain that although *"it is standard practice to use journey validation at the route level….increasingly there is a need to take a more detailed approach and check journey time validation at the link level or for segments of the route as well" (emphasis added)*. This is exactly what Mr Jarvis has done when undertaking the local validation – a check of journey time validation for segments of the route. There is no suggestion that these sections are required to be 3km in length. Even if this was a valid criticism (which it is not) , it is highly pertinent to note that subnetwork 3 validates well against the alternative metric (turn and link counts at junctions). Of course, Mr Tucker confirmed that this criticism does not apply to subnetworks 2 or 7.

3) Third, Mr Tucker sought to argue that when assessing capacity at junctions microsimulation modelling *outputs* should be checked against outputs from isolated junction modelling.[526] Again this is to misread the applicable guidance. The DfT guidance cited by Mr Tucker[527] is applicable to calibration of the microsimulation model (i.e. adjusting model parameters to accurately reflect the network), rather than validation (comparing model outputs with observed data). As the section in the Model Validation Report on calibration makes clear, the guidance to which Mr Tucker refers has been followed when the MAM was calibrated.[528] In terms of validation, as the DfT TAG Unit 3.1 guidance confirms, it is the *observed* data against which the model outputs should be compared: which is exactly what has been done. Contrary to Mr Tucker's contention there is no suggestion in the DfT guidance that at the validation stage, MAM outputs should be compared against estimated outputs of isolated junction modelling. That is common sense, because where one has observed data, as is the case here, it is plainly preferable to validate the outputs of that model against that observed data, as opposed to the estimated outputs of another model.

[525] CD12.8 paragraphs 4.3.2 and 4.3.3
[526] XIC Day 13 (Youtube recording 7:21:30)
[527] Tucker Rebuttal (CD10.13) paragraph 3.23
[528] CD12.4 MAM Validation Report, p50, second bullet which explains that '*FORE_MACRO_JDF_3_Roundabout: This function is used to calculate the delay incurred on the approach to a roundabout. Capacity is calculated as a function of the circulating flow based on the capacity relationship used in ARCADY. The geometric parameters (entry width, approach road half-width, flare length, turning radius and inscribed circular diameter) are all calculated from the coded network geometry using a Python script. The resulting RFC is then used to calculate the delay.*'

7.151 Having been forced, at a late stage, to abandon his central attack on the credibility of the MAM, in his 2nd rebuttal proof and in his oral evidence, Mr Tucker turned his attention to the future scenarios in the MAM.

7.152 The 'logic' of Mr Tucker's position became clear in cross-examination. In his view, the outputs of the isolated junction modelling are infallible. That being the case, once the MAM base model was demonstrated to validated adequately, on his approach the only possible reason for the disparity between the outputs of the isolated junction modelling and the MAM, could be down to an (still unidentified) error in the development of the future scenarios. Of course, this logic only holds true if one starts from the position that the isolated junction modelling is infallible – which plainly it is not. Mr Tucker's belated criticism of the credibility of the future scenarios is as baseless as his original and primary attack on the validation of the MAM.

7.153 It is of particular significance in this regard, that Mr Tucker does not challenge the credibility or accuracy of the 2028 and 2037 reference cases (both of which are future scenarios).[529] He was right to accept as much. The reference cases, developed by Sweco, were the subject of a detailed forecasting report undertaken by Sweco and Fore Consulting.[530] And as Mr Jarvis explained, the MAM future year reference case models have been signed off by Highways England and their consultants.

7.154 The fact that no one is doubting the accuracy of the reference case should give the Inspector and Secretary of State significant confidence about the credibility and accuracy of <u>all</u> future year scenarios, including the "with development" scenarios. Both the reference case, and the "with development" scenarios were developed by Sweco using the same paragraphs and assumptions.

7.155 Indeed, in terms of modelling approach, the future year reference case and future year development scenarios are closely aligned. As Mr Tucker accepted in cross-examination,[531] the only differences between the reference case and the 'with development scenarios' are: (a) additional development trips (which can also have a diversionary impact on existing traffic) and (b) off-site mitigation proposed in conjunction with the appeal scheme. In respect of the former, any difference between the parties has been accounted for by the Council modelling the Appellant's preferred trip generation. In respect of the latter, there is no suggestion that Sweco have misunderstood or inaccurately modelled the Appellant's proposed mitigation. This therefore begs the question, if the future year reference cases are accepted as being credible and accurate (as the Appellant does), why are the future year 'with development' scenarios not similarly credible and accurate? It is a question with which the Appellant has not even sought to engage.

7.156 Instead, shorn of his criticism concerning validation and having conceded that the reference case was credible and accurate, Mr Tucker resorted to disparate criticisms of the future year scenarios – pointing to outputs which did not look right to him (it being recalled that he has never built, calibrated or validated a microsimulation model).[532] For the reasons set out below, none of these

[529] XX Day 13 (Youtube recording 4:46:00). See also Mr Lopez XX of Jarvis Day 11 (Youtube recording 5:35:30)
[530] Mr Jarvis PoE, Appendix E
[531] XX Day 13 (Youtube recording 4:48:25).
[532] As he confirmed in XX (Day 13)

criticisms have any force. Even if they did, pointing to supposed isolated anomalies within the future year scenarios would not be sufficient to undermine the credibility of the MAM outputs given the robustness of the model as outlined above. Mr Tucker's residual criticisms of the MAM are a far cry from the '*significant and undermining shortcomings'* which he was originally alleging.

7.157 It is in that context that the residual and disparate criticisms concerning the future year scenarios fall to be addressed:

1) First, in Tables 4 to 6 of his original proof, Mr Tucker pointed to the apparent disparity between the relatively small change in flows on certain routes and the change in the recorded level of service on those corridors as demonstrating that the 'findings of the model are clearly erroneous.'[533] This criticism is repeated in his second rebuttal proof.[534] Mr Jarvis explained during his examination in chief why this analysis was misconceived[535] (a subject on which he was not cross-examined). In short this is because:

   i) Mr Tucker had taken flows in the tables from the macro model. These are the *demand* flows - the amount of traffic that wishes to use the route. And he has sought to compare them with journey times taken from the microsimulation model. These are based on *actual* flows - the amount of traffic that can use the route. Where a route is congested the *actual* flow (which is affected by queuing, blocking back and flow metering) would be lower than the demand flow (which is unaffected by such phenomenon). Thus, Mr Tucker's Tables 4 to 6 impermissibly compares 'apples and pears' and is, therefore, of no value.

   ii) The flows are taken from one single location on a route; whereas the journey time is based on the entire corridor. The difference between the level of flows at one point on the corridor tells us little, if anything, about the difference in flows across the entirety of the corridor.

   iii) In any event (without explaining as much) the tables do not present like with like: the level of service/journey times are taken from the December 2019 report (with a 2035 reference case)[536] and flow information from the October 2020 report (with a 2037 reference case).[537]

2) Secondly, Mr Tucker pointed to the 'select link analysis' which, he said, showed an immaterial change in flows on the network, particularly on the A2, once the development is added.[538] The Flow Comparison information,[539] which provide the macroscopic/demand flows, gives the lie to this contention. These show that, although there are some corridors

[533] Mr Tucker PoE, paragraph 6.6.10
[534] ID36 paragraph 3.12
[535] XX Day 11 (Youtube video 3:58:50)
[536] CD12.10
[537] CD 12.1
[538] ID36 paragraphs 1.6, 3.8 and 3.12
[539] ID43

which experience a reduction in flows[540], there are sizeable increases in flow in the AM Peak on: (i) A2 Eastbound west of Bowaters roundabout (+100 vehicles (+7%)); A2 Eastbound east of Bowaters roundabout (+366 vehicles (+44%)); and Lower Rainham Road westbound (+450 vehicles (+77%)). In the PM peak there is a sizeable increase on the A2 Eastbound east of Bowaters (+318 vehicles (+29%), as well as material increases on the A2 Eastbound west of Bowaters (+79 vehicles (+4.5%); and A2 Westbound west of Bowaters (+29 vehicles (+2%)). These changes in flow are a result of the additional development traffic, as well as the diversionary impact caused by the development traffic and the mitigation proposed. So the suggestion that there is an immaterial change in flows on an important part of the network, is simply wrong.

3) Thirdly, and following receipt of the Flow Comparison information, in cross-examination Mr Tucker sought to realign his criticism, querying why the microsimulation modelling showed a substantial increase in queueing on the A2 west of Bowaters, when the flow increases on that stretch were (in his view) immaterial. The answer is obvious when the situation is considered in context. The microsimulation videos show that the eastbound A2 west of Bowaters in the 2028 reference case is already congested in the AM Peak. It is wholly unsurprising that once the development traffic is added the congestion is worsened, taking account: (a) the additional demand of 100 vehicles on this particular corridor (which is plainly not immaterial); (b) the additional demand of 366 vehicles immediately to the east of Bowaters (which is undeniably substantial); and (c) importantly, the blocking back which occurs through the roundabout, caused by a combination of the pedestrian crossing to the east of Bowaters, and the bottleneck where the two eastbound lanes merge into a single lane (this blocking back can clearly be observed on the microsimulation video, and does not occur in the reference case). The same is true of the PM peak, albeit to a lesser extent. A real advantage of the microsimulation videos is that it can account for those issues on the links which cause a reduced capacity at junctions and cause queuing which is simply not captured in the isolated junction modelling.

4) Fourthly, in respect of subnetwork 3, Mr Tucker points to the alleged disparity between the observed data for Meresborough Road in 2016/2018 and the flows predicted in the 2028 reference case for this link and '*assumes the change to be in error.*'[541] This criticism is surprising given that Mr Tucker has accepted the credibility of the reference case. The same point can be made in relation to the Moor Park Close cul-de-sac issue. These issues are raised in relation to the reference case, which case has been accepted by Highways England and the Appellant to be credible and accurate. In any event, Mr Jarvis explained why there was no such error:[542]

[540] As ID42 explains, this is because of diversionary impacts, as well as reduction in capacity for certain movements as a result of the proposed mitigation causing rerouting.
[541] ID36 paragraph 3.48-3.49. His proof refers to Moor Park Close, but as there is no observed data for this road in either the DTA or MAM validation report
[542] XIC (RW) Day 11 (Youtube recording 4.26.00)

a) The MAM validation report does not show Meresborough Road having a flow of 8 vehicles per hour (it being noted that Mr Tucker did not provide a reference to the relevant data in his proof or oral evidence). Further analysis shows that Mr Tucker appears to have confused Meresborough Road with Meresborough Lane – a rural lane, approximately 1.5km away which does have a flow of approximately 8 vehicles an hour.[543] In contrast, in 2016 the observed flows on Meresborough Road ranged between 20 and 260 vehicles per hour – depending on where the count was taken.[544] Therefore Mr Tucker's premise is incorrect.

b) Even if the observed data were correct, as Mr Jarvis explained the disparity is not a cause for concern because there is no reason to suppose that flows observed in 2016 would be comparable with predicted flows in the 2028 reference case (having regard to the additional traffic on the network at that stage).[545] It is a fundamentally different exercise to validating the 2016 base model, where one would expect the modelled flows to be comparable to those which are observed. Whilst it is a valid exercise to point towards any disparity in flows between a base model and observed data, it is not a valid exercise to point to disparities in flows between future year scenarios and observed flows – that would be comparing apples with pears.

7.158 Standing back from the detail of the criticism, it can be concluded that the MAM is a credible model. It validates extremely well. Its future year reference cases are rightly not challenged and there is nothing of substance in the disparate, unsubstantiated criticisms of the future year 'with development' scenarios.

Credibility of Appellant's modelling

7.159 In contrast, the credibility of the Appellant's modelling is fatally undermined by the failure of its base model to validate adequately. As a starting point, the process of validation was plainly inferior to that of the MAM:

- In contrast to the multiple measurements against which the MAM base model was validated, the outputs of the Appellant's base model has been compared to one observed measurement only: queue lengths at junctions.
- Whereas the MAM validation drew upon a very broad data-set (both ATC and MCTC), the Appellant has relied on queue surveys taken on one-day only.
- In contrast to the MAM - which easily passes the criteria published by the DfT specifically for the validation of such model - the Appellant's modelling has not been tested against any published criteria.

[543] See CD12.4 MAM Validation Report Appendix D 'Observed' data, p151 PDF AM peak 28051 Meresborough Lane – 7.5; p198 pdf, PM Peak 28051 - Meresborough Lane – 10

[544] ibid, Appendix D 'Observed' data. Word search 'Meresborough Road". It needs to be emphasised that the flows reported by Mr Tucker are derived from one day counts whereas the flows reported in the MAM validation report (CD12.4) come from automatic traffic counts over a two-week period.

[545] Further analysis shows that in the reference case 2028 AM flow plots in Appendix C of Addendum 3 [ID34a], there are 155 vehicles on Meresborough Road northbound (south of Moor Park Close,). This flow results in part from traffic using a link to Meresborough Road from the services on the M2 between J4 and J5

7.160 Thus, even if the Appellant's modelling validated adequately against this single metric, it would be less credible than the MAM. It does not validate adequately. Far from it.

7.161 Even on Mr Tucker's reported analysis,[546] there are significant disparities between the modelled and observed queues. This is particularly true of the Lower Rainham Road/Yokosuka Way roundabout and Will Adams roundabout, both in the AM and PM peaks. For some of the arms on these roundabouts the model queues are out by factors of 7, with the model predicting a queue of less than 2 vehicles (approximately 12m) on an arm, and observed queues *apparently* being 13 vehicles (approximately 78m).

7.162 On the basis of this data Mr Tucker's original conclusion was that modelled queues at some of the junctions were <u>not</u> adequately comparable with observed queues on the ground.[547] His attempt to walk back from this conclusion in cross-examination was unconvincing and does nothing for his own credibility (a point to which we will return).

7.163 Furthermore, when the dataset underpinning the observed queue is interrogated, it can be seen that the observed queues reported in Tables 1 and 2 significantly underreport the actual queues on the ground. This is for two reasons:

1) First, as the survey data explains, the enumerators stopped counting the queue once it was either out of sight or blocking back to the next junction. They would signify this with a + sign next to the relevant queue. This occurred at a number of junctions for a large period of the AM and PM peak hours, including the Lower Rainham Road/Yokosuka Way roundabout and Will Adams roundabout .[548] This was not reflected in the average queue lengths reported in Tables 1 and 2, which had assumed for the purposes of the average that the queue length was as reported.[549] This meant that the average observed queue lengths reported in Tables 1 and 2 are artificially restrictive, and not representative of the true position.

2) Secondly, the modelled queues in Tables 1 and 2 were expressed on the basis of the average number of vehicles 'per arm'. In contrast, as became apparent from cross-examination, the observed queues reported in Tables 1 and 2 were reporting the average number of vehicles 'per lane'. Where there are multiple lanes of queues (as is the case, for example, in the east and west arms of Will Adams Way), both of which had queuing traffic, this had the reporting only half of the average observed queue. By way of illustration, Table 1 reports a modelled queue of 1.7 vehicles on the A2 East arm of the Will Adams roundabout in the AM Peak. The reported average observed queue is 13 vehicles. In reality, for the vast majority of the AM Peak hour there are two lanes of queuing traffic where the queue *for each lane* is recorded as 15+. It follows that the total number of vehicles queuing *at this arm* of the roundabout for the majority of the AM period is at least 30 (and quite possibly many more – we simply cannot

[546] Mr Tucker Rebuttal, pp12-13, Tables 1and2
[547] This is the necessary consequence of his statement at paragraph 7.9 of his rebuttal.
[548] See, for example, CD5.25 p309 - Lower Rainham Road/Yokosuka Way roundabout AM Peak; CD5.25 p384 - Will Adams roundabout AM Peak; CD5.25 p385 - Will Adams roundabout PM Peak
[549] See XX(RW) of Mr Tucker Day 14 (Youtube recording 3:20:00 onwards)

tell). Thus, the observed queue at this arm is *at least* 17 times greater than the modelled queue, and quite possibly much greater.

7.164 It follows that a comparison between the modelled queues and observed queues – the only metric by which the isolated junction modelling has been validated – fatally undermines the credibility of the outputs of the Appellant's modelling. For this reason alone, the outputs of the Appellant's modelling must be disregarded.[550]

Accuracy and appropriateness of the competing models

7.165 Even if the decision-maker were to put aside the significant issues in relation to validation of the Appellant's modelling, the MAM is a far more appropriate model to use in the current context. The functionality it possesses in comparison to isolated junction modelling – neatly captured in Mr Jarvis' original proof of evidence[551] - means that, quite apart from issues of validity of the base model, it would produce a more accurate forecast of the impacts on the road network.

7.166 The benefits of the MAM over isolated junction modelling were rehearsed at length during the inquiry, and are not repeated in full here. However, the key differentials are as follows.

7.167 **Holistic assessment of the network** – the MAM enables an assessment of the complex traffic interactions of a large and congested urban area such as Medway. Most notably it takes account of link capacity issues (caused, for example, by pedestrian crossings, bottlenecking, side roads etc); whereas, by their very nature isolated, junction assessments are incapable of accounting for such matters.

7.168 In an attempt to minimise this important functional difference, Mr Tucker has sought to argue that the MAM shows that there are no capacity issues on the links/corridors, and that the increase in journey time (and overall deterioration in network statistics) is solely due to issues at junctions.

7.169 However, the MAM does not show as much. As Mr Jarvis confirmed in XIC and XX[552], it is clear from the microsimulation modelling that the deterioration in journey times and network statistics is caused by a combination of the junctions being overcapacity and link capacity issues. This is particularly true on the A2, where there are a number of potential causes of delays on the links including signalised pedestrian crossings (three sets between Will Adams and Bowaters roundabouts, and four sets east of Bowaters roundabout) a reduction in the number of lanes, causing bottlenecking (particularly to the east of Bowaters), as well as bus stops and side roads. The effect of these link capacity issues – particular the pedestrian crossings, and bottlenecking - can be observed from watching the microsimulation videos.

[550] Having been shown the problems with his own validation Mr Tucker's response was that validation of his baseline models doesn't matter (contrary to his earlier answer), because of the proposal to physically changing the layout of the junction as part of mitigation works. On that perverse logic the accuracy of future year models including mitigation can simply never be known. Moreover, it begs the question as to how you can design a mitigation scheme to address issues with the current layout if the accuracy of the existing results are unknown.
[551] See Mr Jarvis PoE, paragraph 3.3, Table 1
[552] XX(JL)of Mr Jarvis.(Youtube recording 6:40:08)

7.170 Mr Tucker's analysis, in contrast, is based solely on the Volume/Capacity sections (V/C). He is forced to argue that, because none of the links that he identified are recorded as operating at over 90%, it follows that all links are operating within capacity.[553] Mr Tucker's analysis is misconceived in a number of respects:

1) First, as Mr Jarvis explained, the V/C outputs are derived from the macro model. They therefore do not account for queueing, bottlenecking etc which is only taken into account at the microsimulation level. Given that the microsimulation model within MAM does show that there are link capacity issues, it is perverse for Mr Tucker to try to use the outputs of the same model – at the macro level – to suggest otherwise.

2) Second, Mr Tucker's reporting is selective. As the V/C presentation[554] compiled by Mr Jarvis demonstrates there are numerous links which are recorded as operating at over 90% capacity (even without the effects of queueing, bottlenecking etc).

3) Third, the industry standard at which junctions or links are generally considered to be operating above practical capacity is 85%. Both Mr Jarvis and Mr Rand confirmed as much. The evidence shows that there are a wide range of links operating at or above this level of capacity even in the macro model.

7.171 **Vehicle behaviour** - the MAM takes account of individual vehicle behaviour such as lane changing, individual acceleration/deceleration, diversionary impacts and traffic routing based on congestion and travel times. The simplistic isolated vehicle simply cannot account for this behaviour, or the effects it may have on the network.

7.172 **Junction interaction/blocking back** – an important functional difference between the two models is that the MAM captures the complex interactions that occur between junctions, as well as between links and junctions on a corridor. In particular, it accounts for 'blocking back' – when a queue backs up through a junction, reducing its capacity. This is a phenomenon which is particularly evident in urban areas, where the network is already congested and there are multiple junctions in close proximity.

7.173 Isolated junction models cannot account for such blocking back. This means that, where blocking back is already occurring, or is likely to occur in the future, isolated junction capacity would over-estimate the junction's capacity.

7.174 We know that blocking back already occurs on the network, and would only increase if this development is permitted. We know it already occurs because the Appellant's own traffic surveys indicated that the enumerators stopped counting vehicles in a queue if that queue extended through the next junction. We know that it is likely to occur in the future year scenarios because the microsimulation model illustrates as much.[555] Indeed, it was partly based on

[553] Mr Tucker 2nd Rebuttal, paragraph 3.10
[554] ID44
[555] See Mr Jarvis Proof, Figures 3 and 4, as well as the microsimulation video

this evidence that the Appellant, mid-way through the inquiry, proposed additional highway mitigation at Bowater roundabout[556]

7.175 Mr Tucker's response to the inability of isolated junction modelling to take account of blocking back is to claim that, because his modelling does not show any of the junctions to be operating over capacity, none of those junctions would cause queuing which would block back through another junction.[557] Therefore, he says, it is not a phenomenon with which we need to be concerned. However, Mr Tucker's logic is flawed on a number of bases:

i) First, it is contingent on the isolated junction modelling being accurate in the first place. Given the significant disparities between the modelled and observed queues, this cannot be assumed.

ii) Second, it ignores the impact of queuing from junctions which he has not modelled.

iii) Thirdly, it ignores the potential for blocking back from elements on the network other than junctions, such as pedestrian crossings and bottlenecks. This is of particular relevance for the A2. By way of example, the microsimulation videos clearly show the blocking back effect of a pedestrian crossing to the east of Bowaters. The videos show how this reduces the capacity of Bowaters because traffic (heading west, either from the A2, or from Twydall Lane) cannot flow through the junction onto the A2 eastern arm. This is evident in the AM Peak video from approximately 8:05am onwards. As Mr Tucker confirmed in cross-examination, although the LinSig model had been extended to incorporate the pedestrian crossings on the junction itself, it had <u>not</u> been possible to incorporate into the isolated junction modelling the effects from this pedestrian crossing.[558]

7.176 **Journey time analysis/overall network statistics** – importantly the MAM provides outputs in terms of predicted journey times along routes and corridors. As has been seen journey times can (and have) been used to validate the model. However, they are also an important indicator of the impact of a particular proposal on the network's performance as a whole. The same is true of the overall network statistics. The isolated junction modelling simply does not allow for this level of analysis to be undertaken.

7.177 It follows from the above that, even if the Appellant's modelling was credible – which it is not – it would not accurately capture the likely effects of the development on what is already a congested network. The failure to account for link capacity issues, for individual vehicular behaviour and/or for the complex interactions on the network, means that the isolated junction modelling simply does not deliver the level of accuracy which the MAM is able to provide.

[556] See A2 Junction Operation Review (ID39) paragraphs 1 and 6. Mr Jarvis Addendum Proof (ID52) Appendix A. This included to address the issues at both the toucan crossing and the bottleneck on the A2 eastbound mitigation to the east of the roundabout itself
[557] XIC (JL) Mr Tucker
[558] See XX(RW) of Mr Tucker Day 14 (Youtube recording 5:15:40 onwards). DTA have not modelled the pedestrian crossings at Edwin Road and Guardian Court

Credibility of the expert highway witnesses

7.178 The Inspector is invited to find that the evidence given by the expert highway witnesses called by the Council was credible and reliable. Mr Jarvis is vastly experienced in macro and microsimulation modelling. He is an expert in the field, having (amongst many other things) developed macro and micro transport models of large urban areas, most recently for Liverpool; developed his own micro-simulation models, including for Highway England schemes; and audited Aimsum models, including of Middlesbrough and audited the Brent Cross development modelling. His written and oral evidence was comprehensive, balanced and transparent.

7.179 Mr Rand is an experienced transport planner, who has previously advised and given evidence on behalf of private and public sector clients on a range of transport related matters. His written and oral evidence was persuasive, with the judgments he made, and the basis on which he made them, clearly set out.

7.180 It is with some regret that the same cannot be said of the Appellant's transport witness, Mr Tucker. Although clearly experienced in the area of transport planning, he was wedded to the results of the isolated junction modelling and unwilling to countenance that his modelling may not be accurate even when faced with the disparity between his modelled results and the observed data. His mistrust of the MAM modelled appears to stem from his lack of familiarity with Aimsun modelling: he confirmed that he has never developed, calibrated or validated an Aimsum model.

7.181 The concern regarding the credibility and reliability of Mr Tucker's evidence is cumulative, stemming from a range of issues with his evidence, and the way in which it was presented.

1) Firstly, and of most concern, is the fact that Mr Tucker was selective in relation to the evidence that he chose to present in his proofs of evidence. There were two stark examples, both on important topics:

   i) In his original proof of evidence Mr Tucker alighted upon two GEH statistics extracted from the MAM Model Validation report and, based on those statistics alone and in isolation, suggested that that *"the model does not accurately enough validate turning movements at junctions and therefore any output relating to junction capacity should be treated with extreme caution"*.[559] He did so having cited the DfT Tag Unit M3.1 guidance,[560] and he went onto imply that the PM peak results failed the criteria within that guidance.[561] This exercise was selective and wholly misleading. As Mr Tucker accepted in cross-examination, the MAM base model does meet the DfT criteria in all respects – something that was expressly confirmed in the MAM Validation report itself. Mr Tucker's failure to mention as much, and to place any residual concerns he had in that context,[562] was a

[559] Mr Tucker PoE, paragraph 6.4.4
[560] ibid, paragraph 6.4.3
[561] ibid, paragraph 6.4.5
[562] It is notable that this criticism is not maintained. This cannot be explained away by the production of local validation results, which were entirely irrelevant to this particular criticism.

significant omission. Had it not been picked up, his proof would have left the reader with the impression that the MAM model failed to meet the validation criteria published by DfT, which is demonstrably untrue.

ii) In his rebuttal proof of evidence, Mr Tucker presented what purported to be average observed queues for the AM and PM peaks across a number of junctions. Mr Tucker confirmed that, together with a colleague, he was responsible for producing these statistics (ie the Tables in his rebuttal). The observe queue lengths are important evidence, as they are the sole basis on which the Appellant has sought to validate its modelling. They were produced directly in response to Mr Rand's criticism that no validation had been undertaken of the Appellant's modelling. However, as has been detailed above, in reality those averages were artificially restricted by the fact that the enumerator stopped counting vehicles in a queue at a given point. And thus, the average observed queue length was calculated from incomplete data. The result was to give the misleading impression that the modelled queues were closer in length to the observed queues than was actually the case. This was not recorded in Mr Tucker's evidence. The averages were presented in his proof without any caveat or relevant clarification. This significant omission was compounded by Mr Tucker's explanation that he had specifically considered this issue when compiling his evidence but did not consider it necessary in his proof to tell the reader that the data from which he had drawn the averages was incomplete.[563]

2) Secondly, in his proof served only three weeks before the opening of the Inquiry, Mr Tucker's evidence to the Inquiry was that the original off-site mitigation proposed was "demonstrably sufficient".[564] On any account this judgment was demonstrably wrong. Only one week into the Inquiry, the Appellant proposed a scheme of additional off-site highway works for the first time (see the Council's costs application for details). Nor was this a result of evidence arising at the inquiry: as Mr Rand had pointed out in his evidence (and is evident from the A2 Junction Review note) the Appellant's own modelling at the time demonstrated that a number of the junctions which became the subject of further mitigation would be operating over-capacity should the development go ahead.

3) Thirdly, Mr Tucker was willing to run with Mr Lopez's point concerning the appropriate network against which to test the impacts of the development, despite this never being foreshadowed in any of his written evidence and even when (in answer to the Inspector's question) this forced him to postulate the absurd position that, on this approach, only developments the size of new settlements could meet the severity threshold.

7.182 For these reasons, to the extent that the Inspector or Secretary of State's decision is to be influenced by the credibility and accuracy of the evidence given by the highways witnesses, it is submitted that the Council's evidence is plainly to be preferred.

[563] XX(RW) Day 14 of Mr Tucker (Youtube recording 3:23:30)
[564] Mr Tucker PoE, paragraph 6.7.5

Impacts of the development on the local highway network, in terms of capacity and congestion

7.183 The impacts of the development on the local highway network are clearly and accurately set out in the Sweco assessment reports, as well as the proofs of evidence of Mr Jarvis and Mr Rand. In particular, the Inspector and Secretary of State are invited to have regard to, and place significant weight on, the following (as representing the most up-to-date evidence):

1) Lower Rainham Report Impact Appraisal Addendum 3 (Sweco, March 2021)[565] with particular regard to scenarios 5A (2028 scenario, MAM trip generation) and 6A (2028 scenario, Appellant trip generation);

2) Mr Rand's Addendum Proof of Evidence (April 2021) – most notably, section 2;

3) Mr Jarvis' Addendum Proof of Evidence (April 2021) - in particular sections 2 to 5; and, in particular,

4) The microsimulation videos – which compare the 2028 reference case with Scenario 6A.

7.184 The detail of that evidence is not repeated is these closings, which seek only to summarise the key outputs in respect of each subnetwork (and referencing the Scenario 6A statistics, given these are the most favourable to the Appellant).

Subnetwork 2

7.185 By any metric, the residual cumulative impacts on subnetwork 2 would be severe. In terms of junction impacts, even in the 2028 reference case, two of the junctions in this network are already over capacity in the AM peak – Lower Rainham Road/Yokosuka Way roundabout and Eastcourt Lane/South Avenue. Nor is this a question of the delays being just above the threshold for an LoS F-rating ('forced or breakdown flow, demand> capacity'): both exceed the relevant threshold by a considerable margin.

7.186 The development would considerably worsen the situation. In the AM peak, three further junctions would operate over capacity, including the key Bowaters and Will Adams roundabouts. Once again, the average delays at these junctions are significantly over the threshold for an LoS rating of F.

7.187 In the PM peak, four junctions would operate over capacity, with junctions on the A289 near the Medway Tunnel now operating over capacity, in addition to two junctions on the A2, including Bowaters Roundabout.

7.188 In terms of journey times, the increases from the 2028 Reference Case (which of themselves evidence some delays) are substantial. The A2 is particularly badly affected, with westbound journey times increasing by over 5 minutes (80%) in the AM and PM peaks, and eastbound journeys increasing by over 10 minutes (89%) in the AM peak, over 8 minutes (119%) in the PM peak. This gives rise to journey times for a 3.3km stretch of the A2[566] of around 12

[565] ID34a
[566] Mr Jarvis Rebuttal (CD10.16), Table 2.

minutes westbound in both peaks, over 21 minutes heading east in the AM peak and over 15 minutes heading east in the PM Peak.

7.189 Journey times on the A289 are also significantly worsened, experiencing an increase in journey times of between 27%-100% as compared to the 2028 reference case.

7.190 The impact of the development is also felt on the overall network statistics with travel times increasing in the AM peak by 23% relative to the reference case (from 3.2 minutes to almost 4 minutes in terms of seconds per km); delays increasing by 38% (from almost 2 minutes to 2.75 minutes in terms of seconds per km); and mean queues by 73% (from 489 vehicles to 846). Similar increases are experience in the PM peak.

7.191 Even if there were no impacts outside of this subnetwork, the residual cumulative impacts on subnetwork 2 – which incorporates two of the important arterial routes in the local highway network – would be severe.[567]

Subnetwork 3

7.192 The impacts on subnetwork 3 are more focused, but no less severe. The additional mitigation, in the form of signal optimisation to give greater green time to the A2, has served to improve the journey times on this part of the A2. However, this comes at a cost of transferring the delay to the side roads, including Meresborough Road and Moor Park Close.[568]

7.193 In terms of junction impacts, the A2/Otterham Quay Lane/Meresborough Road junction would operate over capacity in both peaks, with the delays at the junction being particularly extensive in the PM peak.

7.194 The overall network statistics underscore that the supposed mitigation has not removed the problem, just shifted it to another part of the subnetwork. Travel times increase by 45% (from 3.9 minutes/km to 5.65 minutes/km), delays by 72% (from 2.45 minutes/km to 4.2 minutes/km) and mean queues by 124% (58 vehicles to 130 vehicles) in the AM peak. Once again similar increases are experienced in the PM peak.

Subnetwork 7

7.195 The issue with subnetwork 7 has always been the queues and delays created by westbound development traffic in the AM peak on Lower Rainham Road. It is not hard to see why. The development proposed would cause flows heading westbound on Lower Rainham Road to virtually double in the AM peak, from 582 vehicles/hour in the 2028 Reference Case, to 1,032 vehicles/hour in Scenario 6A. Using the Council's trip generation, the increase would be markedly greater.

7.196 As the Sweco Addendum 3 document[569] and the microsimulation videos illustrate, when the original mitigation proposed by the Appellant is modelled, there would be extensive queuing at this junction for virtually the entirety of

[567] It is noticeable that, even on the Appellant's modelling, for all its inaccuracies, a number of junctions within subnetwork 2 operate with an RFC in excess of 0.85, and therefore over practical capacity.
[568] See Addendum 3 (ID34), Figures 15 and 16
[569] ID 34 and ID34a

the peak hour. Travel times along this route (4km in length[570]) would be in the order of 16.25 minutes, a 127% increase on the 2028 Reference Case. On any account this would constitute a severe residual cumulative impact.

7.197 The belated additional proposed mitigation at the Lower Rainham Road/Yokosuka Way roundabout (allowing two lanes to turn right onto the A289) would serve to reduce the queuing on the Lower Rainham Road. However, it does not negate the severe impact. It merely shifts that impact to another arm of the roundabout and, in this instance, a different subnetwork.

7.198 As Mr Jarvis' evidence demonstrates,[571] the effect of the additional mitigation causes there to be a lengthy queue on the northern approach of the A289/Yokosuka Way (see Figure 12). This is also reflected in the travel times for the A289 heading northbound. Whereas in the reference case, the journey from Hoath Way to Church Street (approximately 5km) would take just over 10 minutes, in the with development scenario, including the additional mitigation, this would increase to 19 minutes and 31 seconds. This is virtually a doubling of the travel time relative to the reference case.

Conclusions

7.199 The impact of the development on the local highway network in terms of congestion and capacity would be significant. The proposed mitigation does little, if anything, to reduce the impact, and in places considerable exacerbates the situation. Whether measured in terms of junctions capacity, journey times or overall network statistics it is evident that the residual cumulative impacts would be severe.

BENEFITS OF THE PROPOSAL

Delivery of housing

Extent of Shortfall

7.200 That there is a significant need for housing in Medway is not in dispute. However, the extent of the shortfall should not be overstated. The Council can demonstrate a housing land supply of 3.03 years.[572] This is a robust, perhaps even conservative estimate of supply, noting the following:

i) It is based on figures derived from the Council's December 2020 AMR, which is the latest published evidence on delivery;

ii) It applies to a 5-year period of 1 April 2020 – 31 March 2025;

iii) All sites included within the supply benefit from the grant of planning permission (and did so as at the date of the AMR), save for three sites which have a resolution to grant subject to section 106,[573] and save for the windfall sites which are included and are addressed below;

iv) Because the small sites (delivering 341 units) have fewer than nine homes, they benefit from the presumption of deliverability.[574] Mr Parr

[570] Mr Jarvis Rebuttal (CD10.16) Table 6
[571] Mr Jarvis Addendum (ID52) Section 4
[572] CD11.1 SoCG on General Matters, paragraph 5.1 and Canavan Proof, paragraph 6.13-6.14 (see Table calculating 5YHLS)
[573] XIC(RW) Mr Canavan. See also Volume 2 of AMR (CD3.8)
[574] Framework, Annex 1, p68

accepted that he had produced no evidence, let alone the 'clear evidence' required, to rebut that presumption;[575]

v) On the large sites, 5,332 (90%) of the 5,906 units benefitted from full planning permission. Again, Mr Parr accepted that these units benefited from the presumption of deliverability, and that he had not produced any evidence, let alone the 'clear evidence' required, to rebut that presumption[576]

vi) Mr Parr did not seek to challenge the inclusion of the windfall allowance (603 units), which is modest, applies only to years 3-5 and is consistent with historic windfall delivery rates; and,

vii) The Council had not sought to include in its deliverable supply any sites which did not benefit from the grant of planning permission (such as those identified in the SLAA, and/or Regulation 18 Plan) in order to ensure a robust supply.

7.201 In contrast, the assessment that the Appellant has undertaken[577] in support of its contention that the Council can only demonstrate a 1.78 year supply, is both outdated and calculated contrary to guidance:

i) As Mr Parr accepted, the supply information used by the Appellant was taken from the December 2018 AMR and related to the period 1 April 2017 – 31 March 2018. There have been two further monitoring years since that date (AMR December 2019 (April 2018-March 2019) and AMR December 2020 (April 2019 – March 2020)). As a consequence, the Appellant's evidence will have ignored any grant of permission in those two years;

ii) This means that the supply information used by the Appellant is two years out of date. In these two years Medway has granted permission for a significant amount of housing;[578]

iii) As Mr Parr accepted, it also has the consequence that the five-year period which was being assessed by the appellant was the period 1st April 2018 to 31st March 2023. The Appellant's asserted 1.87 years supply does not relate to the relevant five year period;

iv) The supply information was derived from the Council's own 2018 AMR. Mr Parr did not undertake an independent assessment of deliverability. Nor has he done so in respect of the supply in the latest AMR, on which the Council relies; and,

v) In order to reach a figure of 1.78 years, Mr Parr has factored in past-under delivery (shortfall) prior to the five-year period in question. This is contrary to the guidance set out in the PPG, which explains that past-under is not required to be included in the calculation of 5-year supply when, as here, the standard method figure is used for the requirement.[579]

[575] XX(RW) Mr Parr
[576] XX(RW) Mr Parr
[577] CD5.12
[578] See Mr Canavan PoE, paragraphs 6.25-6.26
[579] PPG on Housing Supply and Delivery *"How can past shortfalls in housing completions against planned requirements be addressed?* Paragraph: 031 Reference ID: 68-031-2019072 which states '*Where the standard*

7.202 It follows that the Council's calculation of housing land supply is to be preferred and should be considered a robust estimate of future supply.

Weight to be given to the delivery of housing in light of the shortfall

7.203 The Council accepts that, in light of the significant shortfall in five-year housing supply, substantial weight should be given to the delivery of housing (at least to the extent this site can help meet this shortfall).[580] Once again, however, the Appellant seeks to overstate its case, focusing largely, if not solely, on historic under-delivery,[581] a factor which is in any event captured in the standard method requirement, by virtue of the affordability ratio uplift.[582] In doing so, the Appellant ignores the significant steps that the Council is taking to meeting housing needs, both in the short-term and strategically. This factor is relevant to the weight to be given to housing delivery from this scheme, as well as the weight to be given to development plan policies.[583]

7.204 In the short term, this has meant granting a large number of permissions for sustainable residential development on unallocated sites outside of current development boundaries.[584] This has included granting permissions for sites within the Gillingham Riverside ALLI – albeit crucially only where the development in question would neither radically alter the character, nor undermine the functioning, of the valued landscape.

7.205 Notwithstanding the inevitable lag between grants of permissions and the provision of actual houses of the ground, the Council's positive approach to these applications has garnered real results: the number of dwellings completed in 2019/20 (1,130) was the highest ever number of residential completions since Medway became a Unitary Authority in 1998. And the number of units under construction last year was still higher (1,629).[585]

7.206 More fundamentally, through its emerging Local Plan the Council is seeking to meet is strategic housing needs in full. As Mr Canavan explained, each of the four scenarios promoted at the Regulation 18 Stage sought to deliver in excess of the local housing need figure for the Local Plan period. They did so without any reliance of delivery from the Appeal site, which had been assessed by the Council to be unsuitable in its SLAA.

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method for assessing local housing need is used as the starting point in forming the planned requirement for housing, Step 2 of the standard method factors in past under-delivery as part of the affordability ratio, so there is no requirement to specifically address under-delivery separately when establishing the minimum annual local housing need figure.'

[580] Given that the appeal is reserved to the Secretary of State, with the inevitable delays that will bring; the application is at outline stage, with all matters save for access reserved; the extensive pre-commencement conditions, including an unusually onerous archaeology condition due to the prospect of important archeological remains being on site; and the fact that the Appellant does not have a house-builder on board, the prospect that the appeal site will make a meaningful contribution to the five year supply in question (ie 1 April 2020 – 31 March 2025) is questionable.

[581] See XX (JL) of Mr Canavan on the delivery figures set out at his PoE, paragraph 6.20. This XX was also based on the demonstrably false premise that the existing housing requirement figure (derived from the standard method) was applicable from 1998 onwards. As ID32 confirms this is simply not the case.

[582] As per footnote above

[583]See *Gladman Developments Limited v SSHCLG* [2021] EWCA Civ 104 at [27]. See also Mr Canavan PoE, paragraphs 6.576-6.58

[584] See Mr Canavan XIC and PoE, paragraph 6.25 and 6.26

[585] Mr Canavan XIC and PoE, paragraphs 6.20 and 6.21

7.207 This alone exposes as a fallacy the proposition that, despite the considerable harms it would bring, this proposal is needed if Medway is to meet its housing needs.

Delivery of Affordable Housing

7.208 The Council also accepts that significant weight should be given to the delivery of affordable housing given the large degree of affordable housing need in the area. However, the affordable housing need of the area must be seen in its context and should not be over-stated.

i) National policy does not require, or even expect, Councils to meet their affordable housing needs in full. This was true under the original Framework (*Kings Lynn and West Norfolk v Secretary of State for Communities and Local Government* [2015] EWHC 2464 at [32]-[37]) and, remains the case under the current Framework. As Dove J explained in Kings Lynn *"This is no doubt because in practice very often the calculation of unmet affordable housing need would produce a figure which the planning authority has little or no prospect of delivering in practice."* (at 35);

ii) Dove J's expectation is true of Medway. It is wholly unrealistic to expect the Council to delivery its assessed affordable housing need in full (744 affordable dwellings per annum);

iii) Medway has set itself, in its Housing Strategy, a target which it considers achievable, of 204 affordable dwellings per annum. Since that target was established in 2011/12 it has met 95%[586] of that target; and,

iv) In this case the Appellant is offering to secure a policy-compliant level of affordable housing. It is doing simply what policy requires, and no more.

Other Benefits

7.209 Save for the net the improvement in biodiversity which (assuming the suggested condition is considered to be reasonable and lawful) is a significant consideration which can be given moderate weight, the other benefits claimed by the Appellant are either of limited weight (eg economic benefits from construction jobs); simply meets policy expectations and therefore are neutral (eg provision of community facilities); are unsubstantiated; (eg economic benefits and jobs from transport infrastructure) or not material at all (eg New Homes Bonus).[587] These are matters set out in Mr Canavan's proof,[588] which were expanded upon in his oral evidence. They are not repeated here.

[586] 204 x 9 = 1836 total requirement since 2011/12. The Council has delivered 1,754 affordable homes over that time. 1,745/1836 x 100 = 95.5%.
[587] Although local finance considerations, such as the new homes bonus, are capable of being a material considerations, it is only so far as the financial considerations are material to the application: s.70(2)(b) of TCPA 1990. As the PPG (Paragraph: 011 Reference ID: 21b-011-20140612) makes clear these can only be material considerations where it is shown that it would help to make the development acceptable in planning terms. This has not been done in this instance
[588] Mr Canavan PoE, paragraphs 7.10-7.23, and XIC (Mr Canavan) noting that Mr Canavan explained that he had increased the weight to be biodiversity benefits having seen Mr Goodwin's and heard evidence (and on the assumption that the 20% net gain is secured by way of condition).

OTHER CONSIDERATIONS

Emerging Local Plan

7.210 Whilst the Council does not object to the proposal on grounds of prematurity in the sense set out in paragraph 49 of the Framework, it does say that the emerging Local Plan is a material consideration of some importance in this case.

7.211 It is true that the Local Plan is at a relatively early stage, having only passed through the Regulation 18 stage. However, the Regulation 19 Plan is due to be published in the next few months (and likely before the decision in this matter is promulgated), with submission timetabled for December 2021 and adoption in December 2022.

7.212 Most significantly, is that Medway has been awarded £170m from central government, through the Housing Infrastructure Fund (HIF) for infrastructure improvements to enable delivery of the Local Plan. Significantly, the HIF bid was predicated on – and the £170m is ringfenced for - projects which would facilitate strategic growth on the Hoo Peninsula, including the delivery of up to 12,000 homes.[589]

7.213 The Council's planning for the expenditure of the HIF funding is well underway, as is evidenced in the latest consultation on the subject.[590] This includes extensive, detailed plans for the new rail infrastructure (reinstating a passenger service, and creating a new station on the Hoo Peninsula);[591] road infrastructure (consisting of six phases, involving strategic interventions on the local highway network);[592] and green infrastructure (the SEMS proposals)[593] which would unlock the growth.

7.214 As Mr Canavan explained,[594] the emerging Local Plan, and the support it has received from central government in the guise of the HIF funding, are relevant to this determination in at least four respects:

- First, as alluded to above, it demonstrates that the Council is taking meaningful steps to meet its needs, including housing needs. It is not an authority shying away from its responsibilities;
- Second, those steps involve long term planning, and an integrated approach (eg the delivery of strategic infrastructure, and environmental enhancements needed to unlock strategic development);
- Third, the Council's vision has been vindicated, at least to the extent of the award of the HIF grant; and,
- Fourth, there is a clear vision for how the housing needed in Medway would be provided (which <u>does not</u> include strategic development in the area of the appeal site).

[589] Mr Canavan PoE, paragraph. 6.35-6.53, together with the oral updates he gave in XIC(RW)
[590] CD1.4 Medway "New Routes to Good Growth" (January 2021)
[591] ibid pages 31-48
[592] ibid pages 11-30
[593] ibid pages 49-62
[594] PoE, paragraph 6.53 and XIC(RW)

7.215 In addition, it is self-evident that development of this strategic scale is better considered through the Local Plan process. It is through the plan-led process where alternatives can be tested (not least through the SEA/SA assessments); where strategic level interventions can be secured (most notably to transport infrastructure); and where a proposal's consistency (or otherwise) with the overall strategy for the area can be examined. None of this is possible in the current context.

7.216 The emerging plan context militates against the grant of permission, quite apart from issues of prematurity.[595]

Public-interest in a plan-led approach

7.217 Related to the above, is the general principle that it is in the public interest in having plan-led decisions. National policy emphasises that the '*Planning system should be genuinely plan-led.*'[596]

7.218 The point was made in lucid and forceful terms by Sales LJ in *Gladman Developments Limited v Daventry District Council* [2016] EWCA Civ 1146.[597] He explained:

> *'A plan-led system of planning control promotes the coherent development of a planning authority's area, allowing for development to be directed to the most appropriate places within that area, and enables land-owners, developers and the general public to have notice of the policies to be applied by the planning authority to achieve those objectives. It is not in the public interest that planning control should be the product of an unstructured free-for-all based on piecemeal consideration of individual applications for planning permission.' At [6].*

7.219 Sales LJ went on to explain that:

> *'significant weight should be given to the general public interest in having plan-led planning decisions even if particular policies in a development plan might be old. There may still be a considerable benefit in directing decision-making according to a coherent set of plan policies, even though they are old, rather than having no coherent plan led approach at all.' At [40(iv)*]

7.220 Granting permission for this proposal would be antithetical to the plan-led approach: a strategic-sized development, which is contrary to the existing development plan on multiple bases, and which does not form any part of the potential housing scenarios for the emerging local plan. This is a factor which should weigh against the proposal.

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[595] The mischief underlying a conventional prematurity objection, is the prejudice that would be caused to an emerging local plan by a development proposal where the development proposed '*is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan.'* (Framework paragraph 49(a)). Thus, in a prematurity case the harm caused is to the emerging local plan itself. In this case the Council is not saying the emerging plan would be adversely affected, or could not come forward. Rather, it is relevant that there is an emerging plan, underpinned by the HIF grant, which is likely to address the housing need in Medway, and will do so without requiring any provision from the Appeal site. Moreover, we say it is that forum which is better suited for bringing forward such strategic level developments, with the necessary infrastructure requirements. These are material considerations in their own right.

[596] Framework paragraph 15

[597] CD 4.10

PLANNING BALANCE

The Development Plan

7.221 The proposal is fundamentally at odds with the development plan in a number of respects. As a starting point – and as Mr Parr agreed [598]- it is in breach of the development strategy of the Plan encapsulated within Policy S1, given that it is not located in the urban area, and constitutes '*expansion into fresh land…to the east of Gillingham'* which the policy specifies will be '*severely restricted.* Its location in the countryside, in circumstances where it is not allocated and does not fall within any of the appropriate uses defined by the policy, also renders the proposal in conflict with Policy BNE25, again as Mr Parr agreed. However, given the housing land supply position, and specifically the requirement to develop greenfield sites in order to meet housing need, these breaches are considered to carry limited weight.[599] As Mr Canavan explained, the Council would not refuse otherwise sustainable development on this basis alone.

7.222 More significantly, for the reasons set out in respect of the first main issue above, the proposal is in conflict with Policy BNE34. This is a fundamental breach given that the proposal will cause considerable harm to the landscape character of the area and significantly diminish, if not entirely eradicate, the functions played by the Gillingham Riverside ALLI. The economic and social benefits of the scheme do not come close to outweighing this harm. This policy should be given full weight because:

1) As Mr Hughes and Mr Parr agreed, the conclusions of the MLCA supports the continuing validity of the functions of the ALLI, and therefore provides an evidence base for the policy restriction;

2) Mr Hughes agreed that the functions identified for the ALLI continued to have validity today, a position which was consistent with Mr Etchells;

3) Mr Parr accepted that BNE34 is consistent with national policy, specifically Framework, paragraph 170 which required the protection and enhancement of valued landscapes, such as the ALLI;

4) The policy is not a general restraint policy – it only prohibits development where material harm is caused, and where that harm is not outweighed by economic and social benefits of the proposal. It therefore incorporates an internal balance. That being the case, the housing land supply situation does not provide any proper basis for reducing the weight to be given to this policy; and,

5) Finally, in the most recent appeal decision on this issue – Orchard Kennels[600] - the inspector gave detailed and cogent reasons for giving the policy full weight. The inspector and Secretary of State is invited to follow this decision (and, consistent with the principle of consistency in decision

[598] XX(RW)
[599] It is noted that Policy BNE25 also has a dimension relating to the character, amenity and functioning of the countryside. The Council does not accept that this element of the policy is out of date, but in this case as policy BNE34 is applicable that issue does not require determination.
[600] CD4.4 See paragraphs 24-29. Note that the Inspector also gave reasons for disagreeing with the position adopted in the *Gibraltar Farm* appeal (CD4.1), a much earlier appeal prior to the 2019 Framework

making, would be required to give reasons if they wished to depart from it).

7.223 In light of the fundamental conflict with development policy, which is to be given full weight, the breach of Policy BNE34 should be given significant, if not substantial, weight.

7.224 On a related note, the proposal would also conflict with Policy BNE47 given that it would transform Pump Lane – currently identified as an important rural lane – into a suburban through-road. This breach should be given significant weight.

7.225 The harm caused to the significance of the listed buildings and two conservation areas give rise to breaches of policies BNE12, BNE14 and BNE18. As a matter of law, this harm must be given considerable importance and weight, and so too should the breach of the related development plan policies. These policies were adopted in the context of, and are consistent with, the legislative protection afforded by section 66 and 72 of the Listed Buildings Act 1990. The same is true of the Framework.

7.226 There is no proper basis for seeking to reduce the weight to be given to Policy BNE18, as Mr Parr seeks to do, simply because the policy does not directly replicate the balance found in Framework, paragraph. 196. In the recent case of *City & Country Bramshill Limited v Secretary of State for Housing, Communities and Local Governmen*t [2021] EWCA Civ 320, the Court of Appeal rejected this very argument, finding that 'The absence of an explicit reference to striking a balance between harm and public benefits in the local plan policies does not put them into conflict with the Framework, or with the duty in section 66(1). Both local and national policies are congruent with the statutory duty.'[601] It follows that the breach of policies BNE12, 14 and 18 should be given significant (indeed great) weight.

7.227 Finally, given the severe impacts on the road network in terms of capacity and congestion there is a breach of Policy T1. This policy ought to be given full weight, as Mr Parr originally agreed (both in the policy table and his oral evidence[602]). For the reasons set out above, there is no material conflict between policy T1 and national policy. Accordingly breach of this policy ought to be given significant weight.

7.228 Despite Mr Parr's entirely unrealistic protestations to the contrary, the proposal is plainly in breach of the development plan as a whole.

The National Planning Policy Framework

7.229 While the proposal finds support from some policies in the Framework with which it would be consistent – chief amongst them, the objective of significantly boosting the supply of housing[603] - it would be contrary to a wide range of important policies in national policy.

7.230 It would fail to protect, let alone enhance, a valued landscape, contrary to paragraph 107(a). The loss of such a significant amount of high quality BMV

[601] At paragraph 87
[602] XX(RW)
[603] Framework, paragraph 59

land cannot be considered to be consistent with the requirement to recognise the benefit of such land, still less to prefer areas of poorer quality agricultural land, contrary to Framework paragraph 170(b) and footnote 53.

7.231 To allow development to proceed in circumstances where there would be a severe residual cumulative impact on the highway network would be directly contrary to policy in paragraph 109.

7.232 In addition, the wide-ranging adverse impacts on designated heritage assets (to which considerable weight and importance must be attached) are not outweighed by the public benefits of the scheme, such that the proposal would be inconsistent with paragraph 196.

The tilted balance and the section 38(6)test

7.233 If the Inspector and Secretary of State accept the Council's case that the public benefits of the scheme do not outweigh the harm caused to the designated heritage assets (considered in isolation, without other harms), then the so-called tilted balance in paragraph 11 would not apply. In such a scenario, it is clear that the section 38(6) tests could not be satisfied. In circumstances where the harm to designated heritage assets alone outweighs the benefits, it must logically follow that when all of the remaining harms are factored in, that material considerations could not outweigh the breach of the development plan.

7.234 If the Council's position on Framework paragraph 196 is not accepted then, due to the lack of a five-year housing land supply and the housing delivery test result, the tilted balance would be in play. Thus, the decision maker would be required to ask, '*would the adverse impacts of granting permission significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole?*'.

7.235 It is settled law that, in answering that question, the decision-maker is entitled to have regard to the policies of the development plan: *Gladman Developments Limited v SSHCLG* [2021] EWCA Civ 104.[604] Indeed, at paragraph. Lindblom LJ went as far as to state:

> *'It is clear, therefore, that a complete assessment under paragraph 11d)ii, in which "adverse impacts" and "benefits" are fully weighed and considered, may well be better achieved if relevant policies of the development plan are taken into account. This is not a substitute for discharging the decision-maker's duties under section 70(2) of the 1990 Act and section 38(6) of the 2004 Act. It is integral to that process.'*

7.236 In this case the answer to the tilted balance question is clear-cut. The significant adverse impacts on the landscape character and visual amenity of the area, as well as the functioning of the ALLI; the harm caused to designated and non-designated heritage assets; the loss of over 50 hectares of Grade I and Grade 2 BMV land; the severe residual impacts on the highway network; the multiple breaches of both development plan and national policy, together with the consequent harm caused to the public interest in the plan-led system;

[604] CD4.15

all – individually[605] and collectively - significantly and demonstrably outweigh the benefits of the scheme, chief amongst them the delivery of housing.

CONCLUSIONS

7.237 The Government objective of significantly boosting the supply of housing is an important part of national planning policy. But as the inspector in the *Gladman* case (whose decision was upheld first by the High Court, and very recently, by the Court of Appeal) remarked: '*it is not the be all and end all.*'[606] It is one, amongst a number of objectives, which include:; protecting and enhancing valued landscapes;[607] recognising the benefits of BMV agricultural land, and directing development to areas of poorer quality;[608] giving 'great weight' to the significance of designated heritage assets;[609] and avoiding development where the residual cumulative impacts on the road network would be severe.[610]

7.238 The significant harm that would be caused to each of these objectives, and the consequential breaches of related development plan policy, demonstrate that this proposal should be refused. It is inimical to the achievement of sustainable development.

8. THE CASE FOR OTHER PERSONS APPEARING AT THE INQUIRY

8.1 A number of other oral and written representations were made during the Inquiry. The names of those who spoke at the event are listed at the end of this Report. The main points of the speakers are summarised below.

Rehman Chisti MP[611]

8.2 I have consistently and strongly opposed this development from the very outset. Taking account of local knowledge and residents' views and I fully support Medway's position and arguments in opposition to the development.

Scale and Strategic Approach

8.3 This is one of the largest single developments that has been proposed in this constituency whilst I have been the local MP. Housing and planning development of such a strategic scale needs to go through a Local Plan, where a number of different proposals and strategies are considered. This site has not been identified by the local authority for planning development and it would be wrong to grant this application contrary to that very basic principle. Indeed, the appeal site was not considered to be suitable, available and deliverable in the Council's Strategic Land Availability Assessment, which went to Cabinet in December 2019.

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[605] The Council maintains that the harm caused to the landscape, designated heritage assets, agricultural land and highway network is of such a magnitude that any one of them in isolation (albeit taken together with the consequential breach of development and national policy) would justify refusal on permission on the basis that the harm significantly and demonstrably outweighed the benefits.
[606] CD4.15 *Gladman Developments Limited v Secretary of State for Housing Communities and Local Government* [2021] EWCA Civ 104 (paragraph 17 of Judgment)
[607] Framework, Paragraph 170(a)
[608] Framework, Paragraph 170(b) and fn55
[609] Framework, paragraph 193. Reflecting the statutory presumption against development which harms the significance of designated heritage assets found in s.66 and s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990
[610] Framework, paragraph 109
[611] ID9

8.4 In terms of the emerging Local Plan, the Government's current methodology means building 28,300 homes by 2037. However, that will be met through the plan-led process, which allows for the merits of alternative strategies (and alternative strategic sites) to be assessed and for the necessary infrastructure to be provided in an integrated manner.

8.5 I support new housing where it can be sustainably built, ideally on brownfield sites, and with the views of the local community taken into account. With regard to housing on green spaces, of course one needs to look at that when the need requires such but, where we are considering sites of such a strategic scale, they need to go through a Local Plan procedure and with full public consultation. However, the development proposed at Pump Lane is of too large a scale, on a site which has not been identified by the local authority for housing.

8.6 The Council's successful Housing Infrastructure Fund bid which will mean £170million of funding in Medway to provide over 12,000 new homes on the Hoo Peninsula.

Character and Appearance

8.7 The appeal site is rural, mainly comprising high-quality farmland. There are also leisure facilities available to the public such as bridleways and several small country roads. Were the development to go ahead, over one hundred acres of high-quality land would be lost forever, and the green and rural environment not only of the site itself, but also the surrounding area of Lower Rainham, would be badly damaged.

8.8 The scheme would have a significant long-term negative impact on the landscape, which so many residents enjoy. New housing should be built primarily on brownfield sites, with appropriate supporting infrastructure. Where greenfield development is necessary, this should only be where the environmental impacts can be adequately addressed and taking into account the views of the community.

Heritage

8.9 The development would have a harmful impact on our local heritage, with many nearby heritage sites being negatively impacted. The development would be contrary to the Local Plan and the supposed benefits would not outweigh the harm to the heritage sites, nor the harm to the landscape.

Supporting Infrastructure

8.10 This constituency contains some of the most densely populated wards in the Medway Unitary Authority, such as Twydall directly to the south of this development. At 1,250 homes on little more than 126 acres, the new development would be more densely populated than Twydall already is.

8.11 With good urban planning, a densely populated area can be supported, but that relies on significant further resources to ensure extra school places, GPs, public transport links and road capacity are readily available. The addition of an extra 1,250 homes would increase pressure on already stretched social infrastructure.

8.12 Local primary schools are already at capacity and whilst financial contributions towards secondary school places are secured, no physical provision is being made for secondary school places, putting the existing schools under additional strain. There is significant concern too about the serious impacts this development would have on GP and healthcare services, which are already under strain in the local area. Medway Maritime Hospital already covers half a million people and is overstretched. Further housing development will put extra pressure on the hospital.

8.13 I understand that the Kent and Medway NHS Clinical Commissioning Group and the developer have reached an agreement to fund the creation of additional facilities away from the development site. However, this would simply not solve the issue. The Section 106 agreement will not provide additional GPs, which is what our local area needs.

Highways/Transport

8.14 The new development would lead to a significant increase in the number of vehicles on the local road network, which is already highly congested, such as the A2 through Rainham which is already overcapacity. This would lead to longer journey times for residents and concerns about increased air pollution. There is no provision for any reasonable improvement in local infrastructure or additional public transport.

8.15 Furthermore, the proposal to provide additional healthcare facilities away from the development site would create even more pressure on the local road network, as residents are forced to travel further to access these services.

Conclusion

8.16 The proposed development is clearly unsustainable and any potential benefits are outweighed by its negative impact on the local area. It would have serious negative consequences for local residents, who have strongly expressed their opposition to it. This is an unacceptable development and the Secretary of State is urged to reject it.

Councillor Martin Potter[612]

8.17 In recent years, around 500 homes have been built in and around Rainham, or are part of a live development, and there are over 300 in the pipeline with the benefit of permission. So, what makes this development different from what went before to lead to such an overwhelming reaction against it? What is so significant about the harm? Why did the 2018 community petition amass over a 1,000 signatures in a matter of weeks when it was only a concept? Why did over 3,500 residents make personal written objections, the most for any single housing development in the history of Medway?

Character and Appearance

8.18 The development is proposed in a special area of orchards and farmland. This countryside, to the north of the railway line extending down to the river Medway and west from Berengrave Lane along to Yokosuka Way, is a vital

[612] ID7

green lung preventing the total urbanisation of Rainham through to Twydall and Gillingham. This treasured area of countryside includes historic working orchards and associated heritage properties, farmland, woodland areas and Riverside Country Park (including the Ramsar marshes along the Estuary).

8.19 The relationship between the Lower Rainham orchards and farmland and the Country Park, which together form an Area of Local Landscape Importance (Gillingham Riverside Area) cannot be separated - they run parallel east to west between the railway and the river. The proposed development would cut the heart out of this rural landscape and would severely impact the rural character of this vital wellbeing escape from urban and suburban Medway. It would also extinguish the orchards and would introduce development into an area which is predominantly agricultural land of best and most versatile quality. It would also significantly erode this important green buffer, which prevents urban coalescence, whilst no doubt setting a precedent that would lead to the obliteration of the entire Lower Rainham green lung.

Highways/Connectivity

8.20 As an isolated, car dependent development, it would overwhelm the highway network which has already been stretched to capacity by the aforementioned housing developments built over decades and live development and permissions. Furthermore, it is important to bear in mind there are only two connecting highway through routes (geography dictates an east/west flow) in the Rainham area, which are the already congested A2 and Lower Rainham Road. Therefore, the development would lead to the most severe highway congestion and would contribute significantly to detrimental air quality.

8.21 A key aspect of the transport and access issues is that the development would have limited pedestrian connectivity to local centres and would lack acceptable safe walking and cycling routes due to the nature of the country lanes and narrow highways in Lower Rainham. During daylight hours there are rural public rights of way routes which can be safely traversed. However, we are not convinced these homes would be occupied by 3,000-4,000 people who want to go rambling just to go to the shops or work. The public transport in the immediate area is very limited by its rural nature, and the nearest train station (Rainham) is around 40 minutes' walk by the safest route.

8.22 It should also be noted that the nearest centres (Rainham and Twydall) are small and have limited employment opportunities. They would not provide employment for the vast majority of people. This, combined with the issues relating to transport and access, means car use would be substantially higher than average, which is in stark contrast to the appellant's traffic assessments. The transport and access issues from this development would result in significant harm and rule this development totally unsustainable.

Conclusion

8.23 Although Rainham is now a town consisting of a small centre surrounded by urban/suburban sprawl, it has retained this treasured area of countryside and rural character which also acts as a strategic green buffer preventing coalescence with nearby towns and settlements. It is abundantly clear that the benefits of providing new homes would not outweigh the significant harm that this unsustainable development would have on the rural landscape and

character of the area, on highways and the environment, and with the loss of the Best and Most Versatile orchards and farmland, with impacts from such a development having a detrimental impact on Rainham and the east of Medway. Furthermore, the area does not need to be allocated for development in order for Medway to meet its local assessed housing need as per Medway Council's emerging Local Plan. The appeal, and therefore the proposed development, should be firmly dismissed.

Pump Lane Steering Group[613]

8.24 The Group formed in November 2018, just a short time after learning of the planned development off Pump Lane and quickly grew to a Facebook group with over 3,200 members and thus the Pump Lane Steering Group was formed to try and provide a voice for that community - a community which has submitted over 3,300 objections to the outline planning application, has held six public protests, has created a petition containing over 2,800 signatures and which has displayed over 3,000 posters in local homes for the past 18 months to show how strongly the feelings are about this development.

8.25 We are not NIMBYs and we do not object to any and every development as a way to block progress. We appreciate the need for housing and understand that new houses need to be built somewhere. What we want to ensure is that truly affordable housing is built in the right place, with sufficient infrastructure to support those new homes. We also want appropriate care and consideration for the environment and for the existing residents of the area. The appeal scheme does not address any of those points and the appeal does little to address the Council's reasons for refusing planning permission. Indeed, the Council has clearly stated that its emerging Local Plan satisfies the housing requirement for this area on sustainable sites. The Appellant's proposed development does not form part of that Plan. Indeed the Council's SLAA, agreed by cabinet in December 2019, confirms that this was not considered to be a suitable or sustainable site for development.

8.26 Whilst nine reasons for refusal were cited on the Council's Decision Notice, the Appellant's appeal statement has addressed only five of those, referring to ongoing discussions and an expectation that these matters would be resolved. There is no factual basis upon which that assumption is made, other than the Appellant wishing these reasons to disappear. The fact is that these issues cannot be addressed. It is impossible to double the number and width of the roads around the development site, due to existing housing. It is impossible to mitigate the environmental issues and the irreversible impact this development would have on the local ecology.

Highways

8.27 There is significant local concern about what this development would mean for traffic and congestion on already inadequate roads, as evidenced by dozens of community posts, photographs and videos showing two miles of stationary traffic stretching from Pump Lane to the end of the Lower Rainham Road.

[613] ID8

8.28 The Appellant is no doubt acutely aware that these roads are well over capacity during peak times and the dangers that presents to cyclist and pedestrians. Indeed, its own study supporting the original application states there are 8,044 vehicles using these roads in a 12-hour period. This compares to figures in the public domain from the Department for Transport (DfT) stating the average for rural roads to be 1,000, rising to 1,400 in the south-east. It is only 1,800 for minor roads, confirming that there are already 4-5 times the number of vehicles using the Lower Rainham Road than the national average. Looking at their figures more closely, it is clear that the traffic is polarised at peak times - in one hour it approaches the national average in 24 hours elsewhere in the south-east.

8.29 The Appellant's "overall access strategy" merely details how vehicles would access and exit the development. It does not address the physical impediments restricting traffic flows on Lower Rainham Road, notably the single lane sections towards the southern end of Pump Lane, due to the cottages and existing housing and bridge restrictions thereafter.

8.30 The Council has, over recent years, already approved 866 new homes and potentially 1,300 vehicles between Otterham Quay Lane and the proposed development, which feeds directly into these pinch points. In the 1 mile section from the bottom of Pump Lane there are four locations where the road narrows to only allow one vehicle to pass, two of which are signal controlled. Even under current circumstances, these create long queues and we are all aware that any issues on the M2 immediately transfer onto the Lower Rainham Road and Beechings Way, bordering the appeal site. Once again, there are testimonies in our Facebook community to journeys taking hours to cover just a couple of miles due to these constrictions.

8.31 The measures the Appellant outlines cannot overcome these immoveable obstacles and are simply a smokescreen to the fact that this decade long development would, during construction, exacerbate an already acute traffic problem at peak times along adjacent roads. Once completed, it would then overwhelm them with vehicles. It would bring a decade of additional construction traffic and thereafter 2,000 vehicles to the epicentre of the problem and the subsequent standstill that it would create, together with the air quality, pollution and road safety implications.

8.32 We say 2,000 vehicles, because the community believes strongly that the traffic assessment documentation in the Appellant's submission is misleading. It cites that 1,250 houses, a 350-pupil school and a 140-care bed home would not significantly impact traffic in the area. That cannot be right. How many households in this type of semi-rural setting have less than two cars? DfT statistics from 2018 state that in general, 34% of households have two or more cars. Being generous and assuming an average of 1.5 cars per new household, that is nearly 2,000 more vehicles spilling out onto the inadequate Lower Rainham Road and Beechings Way. How can that not impact the area?

8.33 The documentation assumes that people would walk to the shops and supermarket, which is 1.5 miles away in Rainham. How many of us know people who walk 20 minutes to do their shopping and then walk 20 minutes back carrying their bags?

8.34 The documentation also says that 29 vehicles would travel to the new school each day to drop off pupils. That covers just 8% of the pupils. Presumably the other 92% of pupils would be walking, yet DFT National Travel Survey statistics cite that the average percentage of parents who drive their children to school is 49%, which is six times greater than the 8% analysis in the documentation. Of course, the Appellant would have lots of alternate statistics which support their view and refute these Government statistics. But how many of us don't drive our children to school? How many of us have driven past a school, anywhere in the country, be it primary or secondary at 08:30 or 15:30 and not been in traffic jams, including Rainham Mark Grammar School on Pump Lane?

8.35 This all needs to be considered in the context of the 866 houses in recent and current developments using the already overwhelmed Lower Rainham Road at peak times. This road runs between conservation areas, community orchards, a country park and a SSSI/Ramsar site which together create a unique estuary ecology with community facilities for all ages and promoting mental wellbeing for all its many visitors. Far from creating a local amenity for pedestrians and cyclists, the proposed development would concrete over the very landscape people currently cycle and walk to enjoy. It would make the car and the issues that accompany them, the overwhelming and dominant feature of Lower Rainham forever.

Environment/Ecology/Biodiversity

8.36 The Lower Rainham countryside, including the Riverside Country Park and Saxon Shoreway, is currently at the cornerstone of social life for many thousands of local residents, providing a green lung, a unique estuary and increasingly rare clean air landscape in Medway. Particularly for those raising children in what is arguably becoming the most difficult time in any of our life-times, the past two years have been somewhat of a paradigm shift as we have come to terms with what fight lays before us, a fight for the successful continuation of ours and thousands of other species. Never before has the care of the natural world been so important. The development proposed would result in the irreversible destruction of the environment, the ecology and biodiversity of this area, something which biodiversity net gain cannot make up for.

8.37 In reviewing the original application, Natural England noted that it '*could have potential significant effects on the Medway Estuary and Marshes Site of Special Scientific Interest, Special Protection Area and Wetland of International Importance under the RAMSAR convention and the Medway Estuary Marine Conservation Zone.'* Kent County Council Ecological Advice Service said that '*The proposed development would negatively impact the site boundaries and species present due to an increase in disturbance from a number of factors including an increase in lighting, noise, recreational pressure,'* with Kent County Council Archaeological noting that '*We have concerns about the impact of the development on historic landscape character and the setting of designated assets, including impacts on the setting of two conservation areas and individually listed buildings…'*

8.38 In fact, there is not a single environmental professional that the Appellant consulted who thinks this is a viable site, because this is an attack on local

protected sites. The Appellant wants to destroy 60,000 apple trees and 7 kilometres of ancient hedgerow and replace them with nearly 50 hectares of concrete. Yes, they would plant a few trees and create some borders, but this would not be sufficient and it would have a severe and negative effect on nearby protected sites, such as the estuary and marshes.

8.39 Even the Appellant's appeal submission in relation to landscape character concedes that this ten year development project would create a major adverse effect on the local landscape. It goes on to state this adverse effect might reduce to moderate *after* 15 years. And that is 15 years after the ten year construction period. But of course, this irreversible destruction would be finite and forever. A grave to the orchards which once gave life.

8.40 And what about the health of the residents? The pollution generated from the construction trucks and HGVs for a decade, in addition to the 2,000 more cars from the new residents, would significantly add to the pollution footprint of the area. In May 2018, the World Health Organisation cited Medway (Gillingham) as being the 4th worst town in the country for air pollution. That places us 16 places above London. Medway Council's 2018 Air Quality Status report cited '*The main source of air pollution in the District is road traffic emissions from major roads, including the M2 and A2.'* It goes on to say that '*Medway suffers from significant congestion.'* The report concludes by saying '*Road transport is the dominant source of pollution and reducing road traffic emissions is, therefore, the key air quality priority. Another significant challenge is accommodating the large demand for development in Medway. This is likely to put existing areas of poor air quality under additional pressure.'*

8.41 According to the Climate Change Committee, the construction of, and subsequent 50 years of life living in, 1,250 brick built homes would generate emissions equivalent to 332,500 tonnes of Carbon Dioxide. We absolutely recognise that housing developments would impact the environment and that social housing is needed in Medway, but the level of harm to the ecosystems, character and appearance of the local environment and the harm it does to our health must be balanced against the social and economic benefits of the development.

8.42 Against the backdrop of the Medway Local Plan, which we're assured by Medway Council would meet the governments overestimated full local housing need, a 1,250 home housing development that would permanently impact the environment; create 50 hectares of concrete; worsen air quality; impact SSSIs and Ramsar sites, of which there are only 73 in the whole of the UK; reduce our ability to provide UK grown fruit to our own citizens and those that we trade with; permanently prevent Lower Rainham residents from having the future security that would come from being able to grow any kind of produce themselves on this site; and would provide little to no benefit to local residents, must be seen simply as a financially profiteering application, and nothing more.

8.43 A C Goatham & Sons are the custodians of this land, land which has existed as fertile agricultural land since at least 1869. Land which is more valuable to our national security than the £189 million this land would be worth if planning permission is granted, and more than the estimated £500 million that the

properties on this site would generate in income. Put simply this is about turning our precious soil into bank notes and nothing more.

8.44 There is always scope to build houses and meet local housing needs on sites that are far better suited to development and where the impact would not be as disastrous and long lasting. Such sites may require more innovative thinking, or result in lower profit margins, but at a time where climate change and mental well-being is very much at the forefront of society, surely such options are the better way to go – better for individuals, better for the heritage of a town and better for the planet as a whole.

Health and Community

8.45 The development proposed would have a significant negative impact on the physical and mental health and well-being of local residents and on healthcare services within the area.

8.46 Documentation submitted by the Appellant during the outline planning stage stated an assumption that there would be a population increase of 3,100 persons resulting from this development. This would take the local population to just over 24,000, all of whom would need a local GP surgery, of which there are currently only ten. Assuming that those 3,100 new residents were spread evenly across the ten surgeries in the area (which would not be the case in reality) each surgery in the area would have just over 2,400 patients, which is considerably larger than the 1,800 capacity set out by the NHS. Time and time again residents in the area have told us that they struggle to get a GP appointment within a reasonable timeframe, because surgeries are so heavily oversubscribed, and that's before the inclusion of this development.

8.47 The Appellant's documentation stated that of the six surgeries they canvassed, five were accepting new patients. However, when we called the exact same surgeries, only one confirmed that it was accepting new patients, with another stating that the surgery might be closing due to a retirement.

8.48 Anyone who lives in this area knows how much we desperately need another hospital. Medway Hospital is literally at breaking point and has been for years. Back in 2017 it came out of special measures, after four long years. Since then, it has failed to meet national targets every single year. One irrefutable reason for that is that occupancy is over, or very near capacity at all times.

8.49 To evidence this, for the two years spanning 2018-2020, the Hospital's Annual Reports noted that it did not achieve the national standard for the four-hour performance target, finishing on just 81%. To quote the Chief Executive of Medway NHS Trust '*The challenges in delivery of the emergency care access standard are strongly linked to the >100% bed occupancy*.' Moreover, in April 2020, the Care Quality Commission gave Medway Hospital a 'Requires Improvement' rating and, once again, very high occupancy rates were cited. It is clear that the people who live in this community suffer, first-hand, the ill-effects of a failing healthcare service which can no longer provide the care it should, due to a growing and aging population.

8.50 Finally, I would like to highlight the importance of a community's surroundings with regards to mental well-being. The proposed development site is one of the few green buffers left between the towns of Rainham and Gillingham and

its development from apple orchards into a housing estate would significantly change the landscape of the local area, impacting upon Rainham's agricultural heritage and residents' sense of place within the Medway Towns as a whole.

8.51 The Appellant argues that the development would '*open up green spaces and provide new planting and landscaping on a site that is currently private commercial land*.' Yet, prior to the community fighting back against this development, residents had walked freely through the orchards for many decades without any objection from the landowner. It should be noted that a public right of way application is currently being considered by Medway Council, which needs to be taken in to account.[614]

8.52 Whether or not public access is permitted to the site, the orchards are very much visible and form part of the rural landscape of Lower Rainham. This landscape, as it stands, is significantly important for mental well-being as it provides a brief escape from the urban landscape of the town, which has grown significantly over recent years.

8.53 For all of these reasons, we feel that the appeal should be resisted.

9. WRITTEN REPRESENTATIONS

9.1 As set out in the Officer's report, there was considerable public interest in this case with some 3,295 letters reported as having been received at the time of the application. Some 3,262 of those were objections relating to the following principle themes: transport; air quality; healthcare; biodiversity; infrastructure; landscape; heritage; education; flooding; climate change; sewerage; construction; and employment.

9.2 In response to notification of the appeal, some 680 individual responses were received, the overwhelming majority of which were objections. These included, among others, responses from Rehman Chisti (the local Member for Parliament), the Ward Councillors, Councillors Potter and Carr, the Medway Liberal Democrats, the Green Party and the Pump Lane Steering Group. Further responses were submitted pursuant to the re-consultation undertaken on the additional material submitted. All these responses are generally reflective of the themes identified by the Council in the officer's report and can be summarised as follows:

- transport and traffic: a significant increase in traffic compromising the A2 and Lower Rainham Road, with poor and constrained access along Pump Lane. Concerns included existing congestion and increased waiting times, the length of existing traffic queues, highway safety and lack of capacity on the rail network. Many concerns also linked the increased road use to existing poor air quality and potential climate change impacts;
- the loss of valuable and productive land (the orchards) and loss of hedgerows, with impact on biodiversity and local air quality and potential climate change impacts;
- significant increased pressure on infrastructure, with local schools at capacity and GP surgeries and the Medway Maritime Hospital currently unable to cope with demands;

[614] See ID 11

- overdevelopment of the area generally, and failure to maximise the use of brown field and previously developed sites. A number of references were made to recent developments, including those at Mierscourt Road, Station Road, Otterham Quay Road, Bakersfield on Station Road, and others, with implications for the loss of green spaces and the amalgamation of development across the area, notably the buffer between Rainham and Gillingham. Some specific concerns were raised referencing the pandemic and the need for open spaces, as well as mental health implications associated with their loss;
- environmental and biodiversity impacts; increased recreational pressure and impacts on the Riverside Country Park and on the Medway Estuary, Marshes, SSSI, SPA and MCZ; impacts on protected bat species;
- impacts on listed buildings and the Lower Rainham and Lower Twydall Conservation Areas;
- increased flood risk to Lower Rainham Road and beyond;
- insufficient water resources and impact on foul drainage;
- increased crime rates; and,
- devaluation of property prices.

10. CONDITIONS

10.1 The related discussion at the Inquiry was based on the schedule of suggested conditions dated April 2021[615] and took place on a without prejudice basis in light of the tests for conditions as set out in the Framework and the Planning Practice Guidance.

10.2 It was agreed that suggested condition 42 could be deleted since planting was a reserved matter. I have also merged a number of the suggested conditions, aiming for conciseness. An additional condition relating to management of the soil resource was also agreed.

10.3 If the Secretary of State is minded to allow the appeal and grant planning permission, I recommend that the conditions set out in Annex D be imposed. They are based on ID15 and the related discussions and are agreed by the main parties. The condition numbers referred to in brackets below reflect those set out at Annex D, not the numbering in the suggested schedule.

10.4 Conditions (1-4) relate to the submission of reserved matters and commencement of development. The shortened period for submission of the reserved matters relating to the first phase and commencement of development was agreed as appropriate in light of the significant shortfall in the Council's housing land supply. To provide certainty, it is also necessary to identify the plans to which the decision relates, but only insofar as they relate to the matter of access, which is not reserved for subsequent approval, and certain parameters (condition 5).

10.5 In order to ensure that the local centre serves the local community only and does not harm the vitality and viability of existing designated centres

[615] ID15

elsewhere, it is necessary to restrict the gross internal floor area of individual Class E units within the proposed local centre. (6)

10.6 Conditions 7-30 are necessarily worded as either pre-reserved matters or pre-commencement/reserved matters stage conditions, as a later trigger for their submission and/or implementation would limit their effectiveness or the scope of measures which could be used to protect legitimate interests.

10.7 The scale of the development scheme requires the submission of a phasing plan to ensure that key aspects of the scheme are carried out in a logical and timely manner in order to secure delivery of planned outputs and to minimise adverse effects on local residents and infrastructure. (7) A Design Code is required with the aim of securing high quality development that also meets targets for combatting climate change. (8)

10.8 Based on current information there is a good likelihood that nationally important archaeology could be present on the site, including remains that fall into the category of being equivalent in significance to scheduled monuments. As a working orchard, the Appellant resisted a detailed evaluation prior to determination of the application as requested by the County Council's senior archaeological officer. Condition (9) represents a pragmatic approach, allowing for archaeological evaluation works to understand the character, extent, condition and significance of any archaeological remains that might be present before detailed designs are finalised. Other conditions require the agreement of safeguarding measures to avoid and minimise harm following the results of the evaluation (22) the submission of a scheme of archaeological investigation (23, 37) and a scheme of historical interpretation. (36)

10.9 A Construction Environment Management Plan is necessary in order to minimise the impacts of construction on local residents, local businesses and those travelling through the area, and to protect the environment. (10)

10.10 Conditions are required to safeguard ecological and arboricultural interests, increase biodiversity and in the interests of visual amenity. (11-13) The Appellant proposes 20% biodiversity net gain as a benefit of the scheme. Condition (12) ensures that that benefit is realised. Condition (14) is necessary to help meet the challenge of climate change pursuant to paragraphs 148 and 150 of the Framework.

10.11 The appeal site comprises more than 51ha of BMV land. Recognising that BMV land is a finite resource, a condition requiring a scheme for the treatment and handling of sub-soil and topsoil from the site is required as recommended in the Environmental Statement.[616] (15)

10.12 It is necessary to ensure that any site contamination, or the potential for such, is detected and remediated accordingly and that any risks from contamination are properly dealt with to protect the health of future occupiers and to prevent pollution of the environment. (16-18, 45)

10.13 It is necessary to secure an acceptable environment for future occupiers/users of the development hereby permitted in terms of noise and vibration from transportation sources. (19-21)

[616] CD5.18 (paragraphs 13.61-13.64)

10.14 In the interests of visual amenity, providing a healthy environment for future residents and helping minimise recreational pressure on nearby international/ European designated sites, it is necessary to ensure that sufficient open space performing a variety of functions is provided for future residents. (24, 25)

10.15 In order to avoid pollution and to prevent increased risk from flooding, details of a sustainable surface water drainage scheme are required, together with details for ongoing management which are essential to ensure that the scheme continues to perform as intended. (26, 38) Although the appellant sought to secure compliance with the submitted drainage strategy, that was resisted by the Council. I am content that the wording employed allows for flexibility pending further investigation, whilst achieving the stated aims.

10.16 Conditions (27 and 28) are required in the interests of highway safety and ensuring the free flow of traffic. In line with policy objectives to promote more sustainable modes of travel and in the interest of pedestrian and cyclist safety, it is necessary secure the intended footway and cycleway links. (29) For wider reasons of sustainability, details of the installation of telecommunications and broadband infrastructure should be submitted and electric vehicle charging points should be provided. (30, 42, 43)

10.17 Conditions (31, 32) are necessary to ensure that the care centre and extra care centre accommodation is provided to ensure a mixed tenure within the site to meet local needs. It is necessary to ensure delivery of the nursery/primary school at an appropriate time, to meet the demands of future occupiers. (33) Conditions (34) is required to ensure that accessible facilities to meet the needs of future occupiers are delivered on site at an appropriate time in order to meet the needs of future occupiers and helping reduce the need to travel. In order to protect the amenities and living conditions of future residents above and in close proximity to the local centre, it is necessary to control operating details of the community/commercial units. (35)

10.18 It is necessary to ensure that the access roads serving the development are constructed to the appropriate standard and are delivered at an appropriate time in the interest of highway safety and accessibility. (39, 40). A full Travel Plan is required in order to promote more sustainable travel choices in accordance with the Framework. (41)

10.19 In order to ensure that the units in the local centre are retained for their intended purposes, namely providing retail, business and community space, a condition removing permitted development rights for change of use to residential or other purposes is warranted in this instance. (44)

10.20 In the interest of visual amenity and in order to protect wildlife, a condition controlling external lighting is justified. (46)

11. PLANNING OBLIGATIONS

11.1 The Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 56 of the Framework set a number of tests for planning obligations: they must be necessary to make the development acceptable in planning terms, be directly related to the development, and be fairly and reasonably related in scale and kind to the development.

11.2 A draft planning obligation in the form of a deed of agreement was submitted in support of the appeal.[617] It was supported by a CIL Compliance Statement prepared by the Council, which sets out its reasons for concluding that the various obligations would accord with Regulation 122 of the CIL Regulations.[618] Both documents were the subject of discussion at the Inquiry. The Agreement was further refined during the Inquiry and I allowed a period after the close of the Inquiry for the submission of a signed version.[619]

11.3 The main provisions, subject to the usual contingencies, can be summarised as follows:

- Financial contributions towards –
  - i) secondary and sixth form provision in the area;
  - ii) provision, improvement and promotion of waste and recycling services;
  - iii) improved facilities and equipment at Rainham Library, or relocation of the library to the town centre if the existing site reaches capacity;
  - iv) public realm improvements, including development of a new square/civic space in Rainham Precinct shopping centre and improvements to the Precinct gateway;
  - v) improvements to public rights of way within 1.6km of the site;
  - vi) redevelopment works at Splashes Leisure Pool;
  - vii) improvements to open space and outdoor sports facilities and to Great Lines Heritage Park;
  - viii) offsetting/mitigating the impact of takeaway establishments;
  - ix) mitigation measures to protect the habitats of wintering birds;[620]
  - x) bus infrastructure comprising bus shelter improvements along Lower Rainham Road and interim assistance to support bus service provision;
  - xi) the extension, refurbishment or upgrade of existing premises within Medway South Primary Care Network; and,
  - xii) highway improvements to junction 4 of the M2 motorway.
- Financial contributions towards a nursery and 2 form entry primary school and the provision of the allocated land within the site for that to be constructed.
- Provision of open space within each phase of the development and a management plan to an approved specification for that open space,

[617] ID22b
[618] ID14b
[619] ID55
[620] See Annex E to this Report

together with arrangements to transfer the open space to a management company.

- Minimum 25% on-site affordable housing, with a 60/40 split of rented and shared ownership provision.

11.4 There was no dispute that the obligations meet the relevant tests. In light of the related discussions at the Inquiry, supported by the information set out within the CIL Compliance Schedule, I have no reason to come to a different view and have taken the obligations secured into account accordingly.

12. INSPECTOR'S CONCLUSIONS

12.1 The following conclusions are based on the oral and written representations to the Inquiry and on my inspection of the site and its surroundings. The numbers in parentheses thus [ ], refer to paragraphs in the preceding sections of this Report from which my conclusions are drawn.

12.2 Having regard to the reasons for refusal pursued by the Council, together with the development plan context, statutory obligations in terms of heritage assets, and the evidence of interested parties on other matters, the **main considerations** that need to be addressed relate to the effect of the development proposed on:

- the character and appearance of the surrounding area, including the Gillingham Riverside Area of Local Landscape Importance and the role of the appeal site as a green buffer;
- the significance of designated and non-designated heritage assets, including the historic landscape;
- the availability of best and most versatile agricultural land, including the loss of the orchards; and,
- the capacity and safety of the local highway network.

Character and Appearance[6.45-6.122, 6.330, 6.331, 7.2-7.73, 7.222, 7.223, 8.7, 8.8, 8.18, 8.19, 8.23, 8.36-8.44, 9.2]621

12.3 The appeal site is located outside any settlement boundary as shown on the Local Plan Proposals Map and lies within open countryside for planning policy purposes. Local Plan policy BNE25 is only permissive of development in the countryside if it maintains, and wherever possible enhances, the character, amenity and function of the countryside, offers a realistic chance of access by a range of transport modes *and* falls within a list of specified uses, none of which apply to the appeal scheme. There is no dispute in this regard, that the development proposed would conflict with this policy.[6.40, 7.221]

12.4 The site also forms a significant part of the Gillingham Riverside Area of Local Landscape Importance (ALLI)[622] as defined by Local Plan policy BNE34, which

[621] See also CD5.27 Appendix 11.1, CD8.3 Appendix 11.1a, CD8.4 Appendix 11.1a, the proofs of Mr Hughes for the Appellant (CD10.3 and CD10.7) and Mr Etchells for the Council (CD10.8) together with the Landscape SoCG (LSoCG) (CD11.3)
[622] Mr Hughes Volume 2 Figure 3

policy seeks to prevent material harm to the landscape character and function of the ALLI, unless justified by economic and social considerations. These areas are described as being significant not only for their landscape importance, but also for other stated functions.

12.5 It is common ground between the parties that the ALLI, and thus the appeal site, comprises a valued landscape with regard to paragraph 170a) of the Framework.[7.2, 7.3][623] Pursuant to paragraph 170a) such landscapes are to be protected and enhanced in a manner commensurate with their statutory status, as opposed to simply recognising its intrinsic character and beauty (as referenced in paragraph 170b)).

12.6 It is also a matter of agreement between the parties that the development proposed would give rise to adverse landscape and visual effects.[624] What is not agreed is the extent of that impact.

Landscape Context

12.7 A description of the appeal site and its surrounds is set out in section 2 of this Report.[2.1-2.4] In brief, it comprises more than 50 hectares of agricultural land, currently in use as commercial orchards. It lies within a broadly rectangular area of countryside, to the northeast of the Gillingham to Sittingbourne railway that sweeps down towards the Estuary from the urban area to the south. The area is characterised by sparse, scattered dwellings/clusters of dwellings, as well as the small hamlet of Lower Twydall, which sits to the west of the appeal site, with the small village of Lower Rainham, which straddles the Lower Rainham Road to the northeast. Both settlements are designated Conservation Areas and are surrounded by countryside, each having its own, individual identity. Beyond the railway line, to the southwest, is the urban settlement of Twydall/Rainham. Otherwise the site is surrounded by agricultural land which extends up to the Medway Estuary.[625]

12.8 The Council's Medway Landscape Character Assessment 2011 (MLCA)[626] places the appeal site within the Lower Rainham Farmland landscape character area (LRFCA), which forms part of the more strategic North Kent Fruit Belt character area as defined by the County Council.[627] For the most part, the LRFCA is bounded by Lower Rainham Road to the north and the railway line to the south.[628] To all intents and purposes, it is split into two parts that are separated by already built/consented development between the northern end of Otterham Quay Lane and Berengrave Nature Reserve: the smaller part lies to the east of that, with the majority of the sub-area lying to the west. The appeal site occupies a significant proportion of that western part. [629]

12.9 The appeal site is representative of many of the key characteristics of the LRFCA. In particular, it makes a significant contribution to the farmland in the area and provides virtually all of the well managed areas of orchard referred to.[7.41] I am mindful, in this regard, that the reference to the orchards in the

[623] Eg paragraph 5.1(12) of the Main Matters SoCG (CD11.1), paragraph 2.2(3) of the LSoCG
[624] SoCG on Main Matters paragraph 5.1(15) CD11.1
[625] Eg Mr Etchells Volume 2 Figures 1 and 2
[626] CD3.4 pages 68-69
[627] Kent County Council's Landscape Assessment of Kent (2004)
[628] Mr Hughes Volume 2 Figure 4
[629] See Mr Hughes Volume 2 Figures 3 and 4

MLCA makes no reference to 'traditional', as opposed to 'commercial' orchards. Indeed, at the time the MCLA was produced, the orchards referred to as a characteristics would have been commercial orchards.[630] I also found it to be tranquil in many parts, despite its proximity to Lower Rainham Road and the railway line (from which, as noted in the MLCA, there are attractive open views across the farmland). The character area is also noted as providing a distinctive green backdrop when viewed from the Medway Estuary. The stated actions for this character area are to conserve and create.

12.10 The ALLIs identified in the Local Plan are first and foremost a landscape designation, described as encompassing areas of landscape that enhance local amenity and environmental quality, providing an attractive setting to the urban area and surrounding villages. As a significant part of the Gillingham Riverside ALLI, the appeal site is also identified as providing an attractive rural setting to the Estuary and the northern edges of Twydall and Rainham.[631] I agree with the observation of Mr Etchells in this regard[7.41] that the site provides an area of separation between Lower Rainham and the urban area of Twydall/Rainham. The LRFCA also identifies that the area has value as an extended buffer to the Country Park and protected Estuary coastline, which lie to the north. That is reflected as one of the stated functions of this ALLI.

12.11 Other stated issues for the LRFCA include:

- potential to restore traditional orchards; strengthen and enhance biodiversity opportunities; introduce more positive land management systems; respect for historic characteristics;
- Grade 1 agricultural soil classification; and
- threat of expansion to urban edges on south and west sides, along with gradual, pervasive erosion of rural character.

12.12 The stated Guidelines include restoration of rural characteristics, resisting further built development and consideration of this area integrally with the Riverside Marshes character area (to the north)[632] for its integral value as a green buffer, wildlife corridor and link to wider countryside.

12.13 The Appellant's revised LVIA (TGLVIA)[633] breaks down the landscape character areas into smaller, more detailed local areas, placing the site within the Lower Rainham and Lower Twydall Fruit Belt (that essentially omits the eastern part of the LRFCA which has quite a different character from the rest of the area).[634] That said, the landscape of the site (and some adjoining fields) is dominated by orchards, whereas the wider landscape to the west within this narrower character area, comprises mainly arable fields with some scattered settlement, and with the landscape to the east also being also partly settled, with woodland and some enclosed fields of pasture.[635]

12.14 The landscape evidence of the Appellant majored on the reference in the MLCA to the landscape type of the LRFCA being urban fringe and the sub-type being

[630] See the sequence of aerial photographs at ID3
[631] CD1.1 paragraph 3.4.104 and 3.4.99
[632] See Mr Hughes Volume 2 Figure 4
[633] Tyler Green Landscape and Visual Impact Assessment September 2020 (CD8.3 Appendix 11.1a)
[634] See Mr Hughes Volume 2 Figure 5
[635] See Mr Hughes Volume 2 Figure 2 and ID3

urban fringe with urban/industrial influences.[6.45, 6.51-6.57, 6.78,6.86] I am mindful in this regard, of the definition of urban fringe in the MLCA,[636] which describes it as *Landscape adjacent to intrusive built-up/urban areas and containing features which intrude upon or detract from the essentially rural, agricultural character to a significant degree. Distinguished from rural fringe landscapes by a distinctively and predominantly urban feel, with urban/industrial elements dominating the landscape in some urban areas.*

12.15 Bloors Wharf on the estuary shoreline, referred to by the Appellant, was an historic industrial use. However, it lies outwith the LRFCA and the Lower Rainham and Lower Twydall Fruit Belt, as do the industrial/commercial uses referred to at Motney Hill and the Mariners Farm boatyard. More importantly, those uses are not apparent in any views from, nor are they experienced in any way from, these character areas, being separated from them by the fields and marshes within the Riverside Marshes character area. Whilst reference is also made to industrial units on Owens Way, that is a considerable distance away, on the edge of Gillingham, well beyond the junction of Lower Rainham Road with the A289 and outwith these landscape character areas. None of those 'industrial' areas has any perceptible influence whatsoever on the essentially rural character and appearance of the appeal site and its surroundings.

12.16 Putting the railway line and the urban area beyond to one side for the moment, no other features were drawn to my attention within, or surrounding, the landscape character areas within which the appeal site lies which I consider intrude upon, or detract from their essentially rural, agricultural character to any material degree. Returning to the railway line, the existing urban edge of Twydall is partially screened by the vegetation along the slight rail embankment that runs along the southern site boundary. However, the railway line is not, in my view, an intrusive feature in the landscape of itself. It is the fact that it 'holds back' the built-up land of Twydall/Rainham on rising land behind which means that there is some urban influence along this edge of the site. As a consequence, I am in no doubt that the established landscape character of this area is not distinguished by a distinctively and predominantly urban feel with urban elements dominating the landscape which might identify it as urban fringe.

12.17 I recognise that the listed characteristics for the LRFCA do include reference to neglected pockets of land and a busy road giving the area a transitional urban fringe character.[6.52] However, the extensive appeal site itself does not include neglected areas, nor were any readily apparent in the immediate surroundings during my extensive site visit. I saw that its overwhelmingly dominant characteristic is as rural countryside. Indeed, I saw nothing during the visit that gave me any impression that the part of the character areas within which the appeal site lies can properly be described as urban fringe in the usual meaning of the phrase. It simply, as a matter of fact, is a rural area that is located adjacent to a railway line that clearly separates it from the urban area of Twydall/ Rainham. The change in character is distinct and abrupt, as opposed to it being an area of 'transition' between town and country. I am mindful in this regard, that policy BNE34 describes the Gillingham Riverside

[636] CD3.4 Appendix B page 121

ALLI (the majority of which comprises the LRFCA and the Lower Rainham and Lower Twydall Fruit Belt) as an attractive rural landscape of orchards, mature hedgerows and arable fields with country lanes, providing an attractive setting to the Lower Rainham and Lower Twydall Conservation Areas, with attractive views from the river and railway, forming a green backdrop in views from the Estuary,[637] being particularly important as a consequence of it providing a *rural setting* to both the Estuary and the northern edges of Twydall and Rainham.[638] I agree with those descriptions.

12.18 The MLCA records that there is considerable variation in the condition of the landscape of the LRFCA. It notes that whilst some pockets are in serious decline (for instance the smaller part to the east of Otterham Quay Lane, which area may have informed the urban fringe references and is excluded from the Appellant's Lower Rainham and Lower Twydall Fruit Belt character area) other parts comprise well managed and cared for areas. Indeed, the area between Lower Rainham and Lower Twydall (the vast majority of which area comprises the appeal site) is specifically identified as being in generally good condition, with urban influences less apparent.

12.19 In support of its case, the Appellant refers to additional development in the area since publication of the MLCA in 2011.[639] However, it is clear from the sequence of aerial photographs,[640] that there have been no significant changes in settlement pattern since at least 2003 when the Local Plan was adopted, that materially affect the landscape character of this area. What development there has been,[641] has almost exclusively been confined to the east of the Rainham urban extension, beyond Berengrave Lane, a significant distance from the appeal site, in a part of the LRFCA that has a very different character and feel,[7.7] outwith the Lower Twydall Fruit Belt area identified in the TGLVIA.

Visual Context

12.20 It is a matter of agreement[642] that the appeal site is generally well contained by mature vegetation, including woodland and tall hedgerows, limiting available views and extent of visibility. However, there are publicly available views into and across the site, including from the adjoining lanes, from Pump Lane which passes through the site, and from the bridleway which runs across its eastern part.[643]

12.21 Views across the appeal site from trains passing to the south are generally screened and filtered by trackside trees and vegetation.[644] Outward views across the site are glimpsed through breaks in vegetation, with some clear views to the Estuary, especially in the winter.[645] In views inland from the promontories of Motney Hill and Horrid Hill, and the northern shore of the

[637] CD1.1 paragraph 3.4.107(xiii)
[638] ibid paragraph 3.4.99
[639] Mr Hughes proof paragraph 3.37 and Figure 3 in his Volume 2
[640] ID3
[641] See Mr Hughes Volume 2 Figure 3
[642] LSoCG (CD11.3)
[643] See eg Mr Etchells Appendix B photos and Mr Hughes Volume 2 photoviewpoints. See also Mr Etchells proof paragraphs 3.6.1a-f and Mr Hughes proof paragraph 3.91-3.104 for more detail on the extent and composition of views as well as the TGLVIA.
[644] eg the video clip appended to the LSoCG (seconds 14-58) and Mr Etchells photos 13 and 14
[645] eg Mr Etchells photo 27

Estuary, the appeal site is set beyond vegetation and trees to the shoreline, and development and hedgerows along Lower Rainham Road. In these views, the urban edge of Twydall/Rainham forms a developed backdrop on the rising land to the south of the appeal site, with the appeal site extending across the view.

Landscape effects

12.22 The TGLVIA identifies the Lower Rainham and Lower Twydall Fruit Belt character area as having an overall medium landscape sensitivity to residential development, largely on the basis of the influence of the settlement edge of Twydall and the asserted urban fringe character. It considers that the estimated ten year construction phase would give rise to site-wide major adverse landscape effects (ie the development would cause irrevocable damage, degrade or badly diminish landscape character features, elements and their setting: the development would be irrevocably visually intrusive and would disrupt fine and valued views both into and across the area).[646] Over the same period, the effects on the wider LCA are identified as major/moderate. Moderate adverse effects are defined as development that would cause substantial permanent loss or alteration to one or more key elements of the landscape, would include the introduction of elements that are distinct but may not be substantially uncharacteristic with the surrounding landscape and where development would be clearly visible, and would result in adverse effects upon the landscape.

12.23 On completion, and taking account of the proposed mitigation planting etc, the TGLVIA identifies the site-wide effects on landscape as being major/moderate adverse,[6. 81] reducing to moderate adverse for the wider LCA. In terms of residual effects (ie 15 years after completion) both site-wide and the wider LCA effects are identified as being moderate adverse.[6.78, 6.82]

12.24 Mr Etchells, for the Council, considers the site and its surrounds to be of medium quality and medium to high value in landscape terms, leading to an assessment of medium to high sensitivity.[7.42] In his view, in the winter of the first year following completion, the landscape effect of the development within the site would high adverse, with a moderate to high adverse effect for the surrounding area,[7.44] those effects being felt over the area of the visual envelope.[647] Long term effects would decline to generally moderate/high adverse for the site itself, and to moderate adverse for the landscape around the site after 10-15 years.[7.45]

12.25 Whilst I have been guided by those formal assessments, the comments that follow are also informed by what I observed during my very comprehensive site visit.

12.26 The development would, as a matter of fact, comprise a significant and large scale development on large swathe of commercial orchards in a rural area. It would result in the loss of those orchards, which extend across most of the site, as well as significant lengths of mature roadside hedging at the proposed access onto Lower Rainham Road and around the proposed junctions/

[646] This, and the definitions that follow, are taken from the TGLVIA Appendix 2
[647] See Mr Etchells Figure 4 With the exception of photoviewpoint 1 (Hoo Peninsula) and viewpoints within the urban area to the south (Nos 20,21 and 22), that encompasses all the photoviewpoints in Volume 2 of Mr Hughes

realignment of Pump Lane.[648] Both the orchards and hedgerows are characteristic features of this landscape type, with the appeal site comprising almost the entirety of the well managed area of orchards within both the LRFCA and the Lower Rainham and Lower Twydall Fruit Belt character area.

12.27 Pump Lane is an unlit, very narrow, sometimes single track country lane with no footways, which wends its way from south of the railway line up to Lower Rainham Road, bisecting the appeal site. Towards its northern end, it is fronted one side by a small group of dwellings, but for the most part, it is lined along both sides with mature hedges/hedgebanks. Indeed, it is identified as a rural lane by policy BNE47 which, among other things, seeks to protect the landscape value of such lanes. As set out in the explanatory text to the policy, these lanes were identified as those of the highest physical landscape, amenity, nature conservation and historic value.

12.28 Four new junctions are proposed on Pump Lane to facilitate its crossing by the proposed estate loop road, as shown on Drawing No 20230-05F.[649] Notwithstanding that access details are for determination at this stage, the full extent of proposed hedgerow removal as part of those works was not apparent until shortly before the Inquiry, as further clarified during the event.[650]

12.29 In total, the new junctions on Pump Lane would require the removal of around 175m of hedgerow.[651] The layout of the southern junctions[652] would require any replacement planting to be set back significantly to allow for forward visibility. At that point, the lane would cease to be narrow and it would no longer be enclosed by hedgerows. At the northern junctions,[653] the road would be realigned to incorporate two staggered T-junctions, with the effect that the road would cease to a be a 'lane' as such. As acknowledged by Mr Hughes in cross-examination, at both junctions, drivers heading north or south would have direct views into (and when turning would be looking directly at) built development.[7.47] I am in no doubt that, particularly at the new junctions, and acknowledging the introduction of community orchards along sections of the lane,[654] the highway would have the character and appearance of a residential access road, as opposed to a rural country lane.

12.30 The TGLVIA includes an illustrative Landscape Framework Plan, a later version of which is included in the evidence of Mr Hughes.[655] Even taking account of the planting proposed, including the proposed community orchards, the character of the local landscape would change completely, from a largely open rural area to a new residential estate. Built development would extend up to Lower Rainham Road, in effect 'leap-frogging' the railway line which, between Yokosuka Way in the west and Lower Bloors Way/Berengrave Lane to the east, is a physical and perceptual barrier that 'contains' the urban area of Twydall/Rainham to the south, providing a strong defensible boundary to the settlement here.

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[648] ID20
[649] Overall Access Strategy and Key Network (ID20)
[650] See the plans at ID20
[651] ID20
[652] Dwg No 13374/P15a (ID20)
[653] Dwg No 13374/P16a (ID20)
[654] See eg the illustrative masterplan Dwg No 11047/PL009C (Appendix 5 to CD8.6)
[655] Mr Hughes Volume 2 figure 8

12.31 Proposed planting around the site boundaries and within the site would soften the impact to some extent. Nevertheless, when travelling along Lower Rainham Road from the west, and when travelling along Pump Lane and Lower Bloors Lane, I am in no doubt that the village of Lower Rainham would be read as part of that extended urban area. It would lose all of its rural countryside setting on the southern side of the main road and would no longer be seen or perceived as a separate settlement with its own rural identity. It would effectively be subsumed within the extended urban area of Twydall/Rainham.[7.43(iv)] That impact was recognised in the appellant's original LVIA submitted with the planning application.[656]

12.32 The bridleway that cuts across the eastern half of the appeal site currently has a very rural feel as it passes through the orchards, with some open attractive views across the appeal site.[657] Whilst improvements to the bridleway are proposed it would, as a consequence of the development proposed, pass through a housing development, including having to cross the proposed estate loop road. The current, rural and tranquil landscape character of the route would, in my view, be completely lost.

12.33 The site also has a contiguous boundary with the southern end of the rural hamlet of Lower Twydall. Again, notwithstanding the planted buffer zone proposed, the individual identity of that settlement would be undermined to some extent as a consequence of the development proposed, although not to the same degree as Lower Rainham.

12.34 Aside from the effects on the extensive appeal site itself, I recognise that the landscape effects that I have identified would be experienced from a relatively constrained area around the site although, as a whole, it is a relatively large area of roughly 1.5 x 1.5 km.[658] That visual envelope is a narrower area than the Lower Rainham and Lower Twydall Fruit Belt area identified by the Appellant, but extends to the north of Lower Rainham Road, to include the Country Park, marshes and Estuary shoreline, together with the Horrid Hill and Motney Hill promontories.[659]

12.35 In my view, in no small part due to the contention that this is an area of urban fringe, the Appellant's assessment generally underestimates the harm to the significance of the landscape at both site wide and the wider visual envelope level during the ten year construction period, on completion of development and at the site wide level in terms of residual impacts. I am mindful, however, that both assessments are comparable in finding the residual impacts to be moderate adverse in terms of the visual envelope, which forms part of the ALLI and which is a valued landscape in the terms of the Framework.

12.36 I have no doubt that the appeal development would be built to a high quality and that the large areas of green infrastructure proposed[660] could result in an attractive place in which to live. Nevertheless this would, in essence, be a

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[656] Lloyd Bore LVIA (CD5.21 Appendix 11.1)
[657] Mr Etchells Appendix B photos 23-31 and Mr Hughes Volume 2 photoviewpoints 14a, 14b and 15
[658] Mr Etchells proof paragraph 6.2.2 and his figure 4
[659] See Mr Etchells Figure 4. Although the depth from the railway line to the promontories is around 1.5km, the depth to the shoreline is around 1km.
[660] Eg Revised Site Master Plan (11047/PL/009C) and Green and Blue Infrastructure Parameter Plan (11047/PL/005B) (Appendices 5 and 6 attached to the Appellant's Statement of Case – CD8.1)

large suburban housing estate, which is not a characteristic feature associated with the landscape of the relevant landscape character areas, or the Riverside Gillingham ALLI. Having regard to the definition of moderate adverse I would, in general, agree with the conclusion of the main parties in terms of the residual impact on the wider area, although if there were a scale within that, I would place the harm at the higher end, on the basis that the development proposed would be uncharacteristic and of a significant scale.

Visual Effects

12.37 Visual receptors are people with the potential to have their views and visual amenity affected by the development proposed. Those views can be experienced from public and/or private places.

Public viewpoints

12.38 Views form part of the experience of those enjoying the Riverside Country Park, including Horrid Hill and Motney Hill and the approaches to them, and the long distance footpath, Saxon Shore Way, which runs along the Estuary coastline here.[661] I consider those receptors to be of medium to high sensitivity. The contribution that the visual experience and views make to the value of landscape has been incorporated into the assessment of landscape effects above and informs the sensitivity of users. Having regard to the table of magnitude of change for visual receptors,[662] I consider that there would be a medium degree of change for those receptors, and moderate adverse visual effects for those with the most open views to the site.

12.39 For users of Pump Lane there would be a high degree of change around the areas of the proposed junctions, where significant lengths of hedgerow would be removed, altering the character of the lane itself completely and with views of the new houses and other uses in the adjoining parts of the site.[663] I consider that change to be moderate/high adverse.

12.40 Other than at those proposed junctions, there would be no physical change to the lane itself. However, whilst development would be set back beyond areas of green space, including community orchards and the proposed village green, the built development behind would, even when that planting was established, still, in my view, be readily perceived. I consider those changes to be moderate adverse.

12.41 Users of the bridleway are of high sensitivity. For most of its route, the bridleway would run through the residential development areas. There would be clear and short distance views from it of the new development at gaps in the hedging and where it would cross the new estate loop road, as well as from the proposed village green which it would cross, before terminating on Pump Lane at the proposed local centre. Even where the route was screened in visual terms, there would still be a general awareness of passing through a residential estate, rather than passing through orchards. I consider the visual

[661] **INSPECTOR'S NOTE**: I consider that views from the Hoo Peninsula on the northern side of the Estuary to be sufficiently distant that the effect of the development proposed on those views would not be material to the outcome of this appeal.
[662] TGLVIA Appendix 2 (CD8.3 Appendix 11a)
[663] ID20

effects in this regard to be high adverse, even once new planting etc is established.

12.42 For users of Lower Rainham Road, there would be a high degree of change at the main site entrance as a consequence of the highway works involved, including highway widening and the introduction of a ghost right-turn lane, together with the removal of some 170 metres of hedgerow on the southern side of the road here.[664] On that basis, I consider the effects to be moderate adverse for motorists at the point of the access. For pedestrian users of the footways here, that effect would be slightly higher.

12.43 In terms of users of Lower Twydall Lane, any views of the appeal site are limited at best. Any visual effects in this regard would be insignificant. However, although the lane terminates at the railway, there is pedestrian access to the south via a footbridge, from which there are clear views across the western part of the appeal site. The visual impacts from there would be moderate to high adverse.

12.44 Lower Bloors Lane runs along the eastern site boundary. Like Lower Twydall Lane, it terminates at the railway, with a footbridge allowing pedestrians to carry on into the urban area beyond. For the most part, views from the lane across the appeal site are precluded by tall established hedgebanks which would be reinforced, in addition to areas of buffer planting behind. I agree with the Appellant in this regard, that any visual effects would be minor adverse where perceptible. There are no clear views of the appeal site from the footbridge here.

12.45 Views for rail passengers, who are considered to have low sensitivity, were discussed above in terms of landscape effects. Passenger views of the orchards and beyond to the Estuary would be lost, replaced by views of a housing estate. The illustrative plans and Landscape Framework Plan show a narrow belt of planting alongside the slight embankment here. I consider that the visual effects would be minor adverse.

Private Residential Views

12.46 Most of the views from properties to the south of the railway line in Twydall are from upper floor windows.[665] Whilst there is a generally dense line of trees and shrubs along the north side of the railway line to the east of Pump Lane, the vegetation alongside the railway line to the west is generally thinner and lower, where the views to the north are more open, though still mainly filtered to some degree. In these views, the orchards and views towards the Estuary would be replaced by built development. The degree of change would vary with the presence of filtering vegetation, but for those with the most open views, taking account of the fact that those views are across a busy railway line, I consider that the visual effects could be moderate adverse for some properties, reducing to anywhere between insignificant and slight to moderate adverse effects for others.

12.47 The Council estimates there to be around seven properties on Lower Rainham Road with rear facing views across the appeal site, including Bloors Place (see

[664] Dwg No 13374/P17a (ID20)
[665] Mr Etchells Appendix B photos 13,14 and 37 and Mr Hughes Volume 2 photoviewpoint 19

heritage section below).[666] For the most part, those would be from upper floor windows across well vegetated boundaries although, as is clear from the evidence of Ms Stoten for the Appellant,[667] that the boundary of the newbuild properties to the south of the Three Mariners is much more open. The existing orchard views would be replaced with views of the proposed school, with residential development beyond that. The effects would vary, depending in intervisibility, from high adverse to slight/moderate adverse.

12.48 There are a number of properties scattered along both sides of Pump Lane, all of which have some views across the existing orchards to varying degrees. The Appellant's evidence considers visual effects for all occupiers to be moderate adverse. Whilst that may be true for a number of the properties, I consider that for others, it is higher.

12.49 Southernmost occupiers of the short run of properties at the northern end of the lane would have views of the new buildings both to the west (of the proposed care facility) and to the southeast (of the proposed school). As such, they would be largely surrounded by the new development. Even taking account of the planting proposed, I agree with the Council that the visual effects would be moderate to high adverse.

12.50 The three dwellings on the east side of the lane, close to Pump Farm, have far reaching views across the orchards. As proposed, they would face onto the new village centre and would be adjacent to the proposed new junctions to facilitate the crossing of Pump Lane by the loop road at this point. The new school would lie to the east of those properties. The new village green would lie to the south/southwest, with residential development up to 12 metres in height beyond. Again, I agree with the Council that there would be a high degree of change for these receptors, resulting in moderate to high adverse visual effects.

12.51 The outermost dwellings within the group of properties at Russett Farm, adjacent to Pump farmhouse, would have views mainly of the new houses in the western part of the site (up to 12 metres in height) albeit seen across proposed community orchard planting. For most of those, I consider the visual effects would high adverse.

12.52 Four properties on Lower Bloors Lane have views across the appeal site. The most northerly of these is located at a point where there is no significant boundary hedging to the appeal site, with clear views across the appeal site from both ground and first floor level. Visual effects for occupiers would be high adverse. The remaining properties, further along the lane are better screened. Allowing for boundary planting etc, I agree with the Council that effects are likely to range from slight to moderate.

12.53 There are limited views towards the appeal site from properties at the southern end of Lower Twydall Lane. What views there are, are heavily screened by existing vegetation. Combined with the development set back proposed and the proposed planting, I agree with the Appellant that visual effects would be negligible.

[666] Mr Etchells proof paragraph 6.4.1(a)
[667] CD10.2 Plate 36

Riverside Gillingham ALLI

12.54 As well as their landscape importance, the ALLIs are significant for other important functions. The Local Plan identifies the specific functions of the Riverside Gillingham ALLI thus:[668]

- forms an important green buffer separating the built-up areas of Twydall and Rainham from areas of international importance for nature conservation and recreation along the Medway estuary;
- enhances the setting of the Medway Towns Northern Ring Road on the western boundary, and allows attractive views from the river and railway;
- provides residents within an extensive urban area with access to an attractive, rural landscape;
- provides an attractive setting to the Lower Rainham and Lower Twydall conservation areas;
- contains a number of orchards, mature hedgerows and farm groups complementing and contributing to the Riverside Country Park; and
- forms a green backdrop when viewed from the Medway Estuary.

12.55 These functions are also identified in the MLCA.

12.56 Green Buffer: For the most part, the ALLI is bounded by the railway line to the south and the Estuary to the north, with a depth from railway to shoreline of roughly 1 km. With a width of between 750 metres to 1 km, and a depth of around 750 metres, the open, undeveloped appeal site forms a significant part of the ALLI, comprising around 75% of its depth. As such, it is clearly a substantial and integral part of the buffer.

12.57 The ALLI includes not only the LRFCA, but also the Riverside Marshes LCA, which lies on the northern side of Lower Rainham Road.[669] The MLCA confirms, among other things, that the Riverside Marshes LCA provides a valuable recreational and biodiversity resource.[6.116] The Appellant's TGLVIA subdivides it into two smaller areas, described as the Medway Marshes Farmland LCA (between the main road and the shoreline) and the Medway Shoreline and Riverside Country Park LCA, which includes the two promontories. It is relevant to note at this point, that the designated boundary of the Country Park itself, includes both those LCAs.[670] It seems to me that *together*, it is these LCAs that comprise the areas of recreation and international importance for nature conservation referred to in the first bullet above. Whilst I agree with the Appellant that there would be no direct impact of development proposed on those LCAs,[6.61] I do not agree with the contention that the development would *reduce* the degree of separation between them and the railway line.[6.118] Rather, were the appeal scheme to go ahead, development would extend from the railway all the way up to Lower Rainham Road, leaving

[668] CD1.1 paragraph 3.4.107(xiii) This provides the justification for designation of this ALLI and guidance on the landscape features and functions that policy BNE34 seeks to protect.
[669] Mr Hughes Volume 2 figure 3
[670] See Mr Hughes Volume 2 figure 3

no buffer at all between the built up settlement edge and the identified areas of recreation and nature conservation on the northern side of the road.

12.58 The Appellant suggests that the proposed development would offer enhancements to the functionality of the site in terms of accessibility between the urban area of Twydall, the wider rights of way network and Riverside Country Park. However, whilst noting that this latter point featured in the General Matters SoCG,[671] it was confirmed by Mr Goodwin (the ecology witness for the Appellant)[672] that, in order to avoid providing a direct link which new residents could use to easily access the designated Medway Estuary and Marshes SPA/Ramsar site,[673] no enhanced pedestrian linkage between the application site and the Country Park towards the north is proposed. In addition, no general parking areas are proposed within the site (aside from those within the care and village centre, both of which would be subject to parking and management controls) and so the development would not provide parking for individuals to park and then access the Country Park and European designated sites beyond.

12.59 In my view, even taking account of the green infrastructure proposed, including the community orchards, the scale of the appeal scheme would materially undermine the identified green buffer function, eroding it completely at this point.

12.60 Views from the railway and Estuary: As noted earlier, there are views across the appeal site from trains passing to the south. Although those views are filtered in places by trackside trees and vegetation, as is clear from the video clip,[674] the appeal site is clearly appreciated from the train, with clear views in places across the site all the way across the site to the Estuary, especially in winter months. That landscape and those views would be replaced with a residential estate.

12.61 During the site visit, I saw that from the causeway approach to the promontory of Horrid Hill and Horrid Hill itself, as well as from Motney Hill,[675] there are clear views of the green undeveloped appeal site as part of the wider green ALLI, on gently rising ground as a backdrop to the Estuary, with the urban settlement of Twydall/Rainham behind. Again, as a sizeable and integral part of those views, development of the site as proposed would materially undermine the contribution that it makes to these identified functions.

12.62 Access to an attractive rural landscape: Public access through the appeal site comprises the bridleway and Pump Lane. Users of those routes currently pass through the attractive rural countryside of the appeal site.

12.63 Whilst residents within the urban area would, in principle, be able to access areas of open space within the appeal site, that space would be in the context

[671] CD11.3, Point 6 (page 6)
[672] In his written evidence (at Appendix 5 to the proof of Mr Parr) and in answer to my questions at the Inquiry. See Annex D below for further information on this.
[673] The location of which is shown on Plan EC01 in CD5.13. See Annex E below for more detailed information on this.
[674] See eg seconds 14-58 of the video clip appended to the LSoCG and Mr Etchells photos 13 and 14
[675] Eg Mr Etchells photos 32, 34 and 35 and Mr Hughes photoviewpoints 2 and 4 **INSPECTOR'S NOTE**: I found the appeal site and indeed the ALLI to be more readily appreciated on the ground as it were, than is portrayed in the photographs.

of a housing estate, as opposed to an attractive rural landscape. Moreover, users of the bridleway would no longer pass through rural countryside, with the rural character and appearance of Pump Lane materially changing not only as a consequence of being bound to both sides by residential development, but also the introduction of new junctions along it/realignment and hedgerow removal. As a consequence, even taking account of the proposed community orchards along parts of Pump Lane and the other panting proposed, the appeal site would no longer provide residents within the urban area access to an attractive rural landscape.

12.64 Providing an attractive setting to the Conservation Areas: I deal below with the contribution of the appeal site to the heritage significance of Lower Twydall and Lower Rainham Conservation Areas as part of their setting. That is a separate matter to their setting in terms of character and appearance generally.

12.65 As set out above, the extent of the development proposed would effectively subsume the village of Lower Rainham, and its Conservation Area, into the extended urban area of Twydall/Rainham, with the consequence that it would lose its separate identity and character as a rural village.

12.66 The site also has a contiguous boundary with the southern end of Lower Twydall. Notwithstanding the planted buffer zone proposed, the individual identity of that settlement, and its Conservation Area, would also be undermined, but not to the same degree as Lower Rainham.

12.67 Contains orchards and mature hedgerows: Whilst the proposal would result in the loss of almost all of the orchards within the ALLI, areas of community orchard are proposed within the scheme. Although covering a much smaller area they could, if delivered successfully, mitigate the orchard loss to some, albeit limited extent.

12.68 As shown on the illustrative Green and Blue Infrastructure Plan,[676] read together with the revised Hedgerow Removal Plan,[677] a significant amount of mature hedgerow would be removed to facilitate the development proposed. Putting to one side the effect of that on the character of Pump Lane, which is dealt with elsewhere, I recognise that the appeal scheme includes replacement planting.

Conclusions on Character and Appearance

12.69 I consider that overall, the appeal scheme would have a substantial adverse landscape and visual impact, with corresponding harm to the character and appearance of a wide swathe of countryside between Lower Rainham Road and Twydall/Rainham. I recognise that those effects would reduce over time to some extent, and I am mindful in this regard of the extensive landscaping proposals. However, whilst the visual envelope is relatively tightly drawn around the site it nevertheless covers a sizeable area. As such, I consider that the degree of harm would be significant. In coming to that view, I have also had regard to the status of the site, lying as it does within a valued landscape as recognised by its designation as an ALLI in the Local Plan and the harm that

[676] No 11047/PL/005B (Appendix 6 to CD8.1)
[677] ID20

would be a consequence not only to its landscape importance, but also to its functions, particularly that as a green buffer.

12.70 Those conclusions bring the development into conflict with policy S1, which among other things seeks to restrict outward peripheral expansion onto fresh land, particularly to the north and east of Gillingham. There would be conflict too with policy BNE25, not only because the scheme does not meet any of specified criteria for development in the countryside, but also because it would not maintain or enhance the character, amenity or functioning of the countryside. The scheme would also conflict with policy BNE34, given the harm that I have found to the character and functions of the ALLI, including its function as a green buffer. The policy does, however, require that any such harm be weighed against economic and social benefits. I deal with that in my overall planning balance section at the end of this report. There would be conflict too in this regard, with paragraphs 170a) and b) of the Framework, which together and among other things seek to protect and enhance valued landscapes and recognise the intrinsic character and beauty of the countryside. I also consider there to be conflict with policy BNE47, in that the landscape character of Pump Lane, identified on the Proposals Map as a rural lane, would be materially undermined by the alterations required to facilitate the new junctions associated with the proposed estate loop road.

12.71 I recognise that the Council has, at times, permitted development on parts of the ALLI.[678] However, whatever the detailed circumstances that led to those permissions, those sites are patently not of the same scale as the development now proposed and, even, more importantly they are, for the most part, located within a part of the ALLI that has a quite different character and appearance from that part within which the appeal site is located. They do not, in this regard, set any kind of precedent for appeal scheme, or diminish the value of the ALLI.

Heritage Assets[6.44, 6.123-6.184, 6.337, 6.338, 7.94-7.118, 7.225-7.227, 8.9, 8.37, 9.2, 10.8][679]

12.72 The Environmental Statement[680] identifies that the appeal site is within an area of high archaeological potential for both the prehistoric and post-medieval periods, with moderate and low to moderate potential for the Roman and Anglo-Saxon periods respectively. Based on current information, some of those remains could fall into the category of being equivalent in significance to scheduled monuments.

12.73 As a working orchard, the Appellant resisted a detailed evaluation prior to determination of the application as requested by the County Council's senior archaeological officer. As a pragmatic way forward, and on the basis that any important remains would be likely to have more impact on detailed location/distribution of houses than precluding development completely, the Council agreed that, were the appeal to be acceptable in all other regards, rigorous planning conditions could provide sufficient protection. On that basis, I had no reason to hear evidence on this particular matter.

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[678] Mr Hughes Volume 2 Figure 3
[679] See also CD5.39 Appendix 14.3, CD6.3, CD6.10, CD8.4 Appendix 14.3a, the proofs of Ms Stoten for the Appellant (CD10.2 and CD10.15) and Ms Wedd for the Council (CD10.7) the Heritage SoCG (CD11.2) and the Main Matters SoCG (CD11.1) paragraph 5.1(9)
[680] CD8.3 Appendices 14.1 and 14.21

12.74 The parties are agreed that the relevant designated heritage assets comprise seven listed buildings and two Conservation Areas, and that any effect on significance would derive from changes to their setting as opposed to any direct effects.[681] An agreed non-designated heritage asset is also in the vicinity. In addition, the Council maintained that the historic landscape of the appeal site is a non-designated asset in its own right. That position was contested by the Appellant.

12.75 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be given to the desirability of preserving the setting of listed buildings. Whilst no statutory protection is afforded to the setting of other heritage assets, including Conservation Areas, paragraphs 189 and 190 of the Framework require an assessment of the significance, including any contribution to that significance made by their setting, of *any* heritage assets that might be affected by a development proposal.

12.76 Paragraph 194 of the Framework makes clear that the significance of heritage assets (defined in the Glossary to the Framework as deriving not only from an asset's physical presence, but also its setting) can be affected by a change in their setting, explained as the surroundings in which they are experienced. The Government's Planning Practice Guidance[682] confirms that this is often expressed by reference to the visual relationship between the asset and the proposed development, and associated visual/physical considerations, including our understanding of the historic relationship between places. It is the *significance* of the heritage asset that enjoys protection in this regard, described in the Framework as its value to this and future generations. Setting is not, of itself, a heritage asset.

12.77 In relation to designated assets, the Framework identifies harm as being substantial or less than substantial. Putting to one side the heritage status of the historic landscape, the settled position of the main parties is that any harm that would arise to the significance of the *agreed* heritage assets would be less than substantial in nature. This does not mean that any harm would be unimportant or of little consequence. Indeed, the Framework also confirms that great weight should be given to the asset's conservation.

12.78 Paragraph 196 of the Framework explains that any less than substantial harm to the significance of designated heritage assets is to be weighed against public benefits. In the case of any harm to the significance of non-designated heritage assets, paragraph 197 of the Framework makes clear that a balanced judgement should be made, having regard to the scale of any harm and the significance of the asset.

12.79 Local Plan policy BNE18 reflects the statutory duty set out at Section 66 of the Planning (Listed Buildings and Conservation Areas) Act, resisting development that would adversely affect the setting of a listed building. Policy BNE14

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[681] Heritage SoCG CD11.2 **INSPECTOR'S NOTE**: A very small portion of the appeal site (between Chapel House and Lower Rainham Road) extends into the western end of Lower Rainham Conservation Area. That land is well vegetated at present and would remain so were the appeal to succeed. It was no part of the Council's case that there would be any harm to the character or appearance of the Conservation Area in this regard, or its heritage significance. I have no reason to disagree.
[682] Paragraph: 013 Reference ID: 18a-013-20190723

requires that development affecting the setting of Conservation Areas should preserve or enhance their historic or architectural character or appearance.

Bloors Place (grade II*), range of outbuildings including cartlodge and granary west of Bloors Place (grade II) and garden walls to south and east of Bloors Place (grade II): [6.130, 6.154-6.162, 6.166, 7.100, 7.103(vii), 7.109, 7.110]

12.80 Bloors Place is located on the southern side of Lower Rainham Road, some 60 metres to the northeast of the appeal site, at the eastern end of the Lower Rainham Conservation Area. It comprises a timber framed, two-storey plus attic house originally constructed as a Hall House in 1470-1510, with later additions. It is set well back from the main road behind a densely vegetated frontage, within a large immediate curtilage which also contains the associated grade II listed outbuildings and walls, and gardens. Wider grounds to the southwest and southeast of the asset include orchard outwith the appeal site. The gardens are very enclosed, with pleasure gardens immediately adjacent to the house enclosed by high walls and with further produce gardens beyond also enclosed by high walls.

12.81 The landholding originally associated with Bloors Place was very extensive and included land that now comprises the eastern half of the appeal site. Based on the 1838 Rainham Parish Plan Map,[683] it would seem that this was a large, dispersed landholding supporting a mixed farming base, rather than a consolidated area centred on the house. Any functional association with the appeal site has long since ceased.

12.82 The Bloors Place complex has been subdivided into multiple separate residences and ownerships. The Wagon Lodge has been converted to a residence with a separate curtilage (including the other listed outbuildings). The former Oast House to the south (an undesignated asset – see below) has also been converted to a separate residence. In addition, a large fruit storage/machinery building has been erected to the south of the Oast House, and a roofing company operates from the former dairy and a yard at the southern edge of the complex.

12.83 The heritage significance of Bloors Place derives primarily from its built form, which has architectural, artistic and historic illustrative value. I consider that the main elements of setting which contribute to its significance relate to its immediate curtilage, including the outbuildings, which together give legibility to the historic mixed farming use of the complex, and the gardens and listed walls. The configuration of these, with high walls enclosing the spaces around the house, and the strong lines of vegetation present in the vicinity of the asset beyond its immediate curtilage, including around the boundaries with the appeal site, materially limit views out to the wider area. The views of Bloors Place from the appeal site, such as they are, lie beyond the enclosed gardens at the rear of the property and beyond further areas of orchard, with the house having no functional relationship with the appeal site. I consider any contribution to the significance of Bloors Place made by the appeal site as part of its setting, to be very limited.

[683] Ms Stoten proof (CD10.2) page 47

12.84 In terms of any contribution to significance by other, intangible qualities of setting, whilst the walled gardens would give some sense of tranquillity to the immediate surroundings, the outbuildings have been converted to residences and commercial uses. It is also close to the main road.

12.85 The range of listed outbuildings lies some 65 metres to the north-east of the appeal site, with the listed garden walls being within some 25 metres of so of the site. The outbuildings most likely date from the C18th with later alterations. They are of brick, with partly weatherboarded timber frame and tiled roofs. They have been converted to separate residences, each with its own curtilage. The garden walls, of English bond brick and limestone rubble with dressings, date from the mid-C17th. They enclose the eastern and southern kitchen gardens.

12.86 The heritage significance of the listed outbuildings and walls is primarily derived from their built form, which has architectural, artistic and historic illustrative value. The element of setting that makes the greatest contribution to their significance is clearly Bloors Place, the presence of which enables the origin of the formerly functionally associated outbuildings and walls to be understood. Their immediate surrounds, comprising the grounds of the residences and the enclosed gardens of Bloors Place, from where each asset can be appreciated, also contribute to their significance.

12.87 Any functional association of the listed buildings/structures with the appeal site has long since ceased and there is little, if any, intervisibility between them and the appeal site, being separated as they are by the Oast House, the roofing company premises and orchard (beyond the appeal site). As such, the appeal site does not allow any meaningful appreciation or understanding of the listed outbuildings and walls.

12.88 The appeal scheme would introduce new residential development, potentially up to 12 metres in height within around 60 metres of the complex, together with a school, up to 10 metres in height, within around 120 metres at their closest.[684] The new housing and school would be set back from the shared boundaries, behind additional boundary planting.

12.89 As acknowledged for the appellant, some limited views of the development are anticipated in the winter months from the rear of Bloors Place and perhaps, obliquely, from its eastern elevation.[685] However, there is no suggestion that the building was designed to have views across the appeal site. Its secluded curtilage, which makes the most significant contribution in terms of setting to the significance of the asset, would not be changed by the development proposed, the former farming use remaining legible within the complex through the presence of the historic outbuildings and walls, and the adjacent orchard areas outwith the appeal site. Any views that might be available towards the appeal site from higher level windows at the property, would be across those private orchards and screening vegetation and are not, in my opinion, integral to the heritage significance of Bloors Place, given the orientation of the house and the siting of the kitchen garden and walls.

[684] Ms Wedd proof (CD10.7) paragraph 6.20
[685] Ms Stoten proof (CD10.2) paragraphs 6.154-6.156

12.90 In terms of the listed outbuildings and walls, the appeal scheme would, at its closest, introduce housing potentially up to 12 metres in height, and a school up to 10 metres in height, within about 60 metres.[686] However, that would be beyond intervening mature vegetation. Whilst the character of the appeal site would change, there is little intervisibiity between land within the appeal site and the listed walls, and none with the listed outbuildings.[687]

12.91 Historic England believes that there would be harm to the significance of Bloors Place due to its relationship with the surrounding fields and rural setting, which it considers to be important to understanding the asset's historic use as a farmhouse and its origins as a rural dwelling.[688] It goes on to express the view that that relationship is still appreciable from the surrounding roads and pathways and from trains passing along the southern site boundary (some 600m away).

12.92 Dealing with this last point first, as is clear from the video extract of the train journey past the appeal site,[689] notwithstanding the distance separation, the Bloors Place complex is completely obscured in views from passing trains due to the band of conifers that runs along most of the length of the bridleway as it crosses the eastern part of the appeal site.[690] As a consequence, any relationship between the complex and the appeal site is not experienced from this aspect.

12.93 Other than the bridleway, no other footpaths cross the appeal site. At a gap in the conifer belt on the bridleway, there is a view towards Bloors Place. However, as demonstrated by the photographic evidence submitted,[691] and as I saw during my site visit, it is the white cowls on top of the Oast House building (an undesignated heritage asset) that can be seen in those views, as opposed to any meaningful appreciation of Bloors Place. Moreover, no key viewpoints from surrounding roads were drawn to my attention where Bloors Place is seen, or appreciated together with the appeal site. In essence, I did not find any relationship of the complex with the appeal site to be readily appreciable in the suggested context.

12.94 So, inasmuch as there would be some limited/intermittent intervisibility with the appeal site (albeit not to the extent suggested by Historic England) I consider that the appeal scheme would result in some, minor harm to the heritage significance of the grade II* listed Bloors Place and the grade II listed walls, but not the listed outbuildings. That harm would be less than substantial, at the lower end of that spectrum.

York Farmhouse (grade II):[6.131-6.136, 6.183, 7.100, 7.104(i), 7.106]

12.95 This former farmhouse comprises a two-storey timber framed dwelling with a plain tiled roof, dating from C16th with later additions and alterations. It is now converted to three cottages. Its outbuildings have also been converted to residential use. It lies close to the road frontage, behind a small fore garden,

[686] Ms Wedd proof (CD10.7) paragraph 6.23
[687] MS Stoten proof (CD10.2) paragraph 6.168
[688] Letter dated 1 August 2019 (Appendix 6 to the proof of Ms Wedd)
[689] See the short video clip appended to the LSoCG (CD11.3) The train passes the appeal site between 14-58 seconds (once past the footbridge at 14 seconds).
[690] At seconds 33-44 on the video. See also photograph 40 in the evidence of Mr Etchells.
[691] Mr Hughes poof volume 2 photoviewpoint 14b (summer view) and Mr Etchells photo 27 (winter view)

and is located within the associated garden plots. Two large dwellings have been constructed to the rear of the listed building (between the listed building and the appeal site) which, together with their extensive grounds, are surrounded by woodland to the south and west, possibly planted to screen the nearby railway line.

12.96 The heritage significance of the building derives primarily from its built form, which has architectural, artistic and historic value. In my view, any significance now derived from its setting relates to its immediate rather than wider setting, its functional and visual relationship with the wider farmland having been severed as a consequence of the substantial new dwellings now constructed behind it, together with layers of domestic curtilage and the woodland planting referred to. Even in winter, that extensive planting and the intervening buildings mean that there is little if any vestigial intervisibility between the appeal site and the listed building.

12.97 The asset is no longer experienced in a way that is illustrative of the relationship it once had with the wider landscape, or indeed with any of the other heritage assets within the wider landscape. In particular in this regard, neither the appeal site, nor any of the other heritage assets, including Pump Farmhouse and the agricultural outbuildings at Bloors Place, are visible as a backdrop in any key views of the farmhouse. Moreover, there is no direct route between York farmhouse and the appeal site. Even when viewed from the elevated vantage point of the adjacent footbridge over the railway line,[692] whilst the appeal site can clearly be seen, intervening woodland means that there is little perception of York farmhouse having any remaining relationship with the appeal site, or indeed any of the other heritage assets.

12.98 Given that context, the changes to the landscape that would be a consequence of the development proposed would not materially harm the heritage significance of the former farmhouse through any change brought about to historic illustrative values. Neither would the development adversely affect the ability of the public to interpret its heritage significance, which is now best appreciated from the lane.

12.99 In terms of any contribution to significance by other, intangible qualities of setting, tranquillity makes no meaningful contribution in this instance – the building is converted into three cottages, it is surrounded by other dwellings, and lies in close proximity to the railway.

Pump Farmhouse (grade II):[6.137-6.143, 7.103i), 7.107]

12.100 Another former farmhouse now converted to a residence. It is located roughly mid-way along Pump Lane, at the centre of, but outwith, the appeal site. It comprises a two storey building of rendered brick with a tiled hipped roof, dating from the late C18th with later alterations and remodelling. Historically, it was surrounded by orchard and arable land. It is set back some distance from the lane, behind what is thought to have been the farm yard but is now a large domestic garden, with a well treed boundary to the road.

[692] Eg Mr Hughes proof volume 2 photoviewpoint 13 and Mr Etchells photo 1. See also Ms Stoten proof Plate 4 (page 13).

12.101 Russet Farm, a development of 24 modern dwellings, arranged as six close-knit terraces with modest gardens, and access roads, has been constructed around two sides of the former farmhouse, immediately to the west and south-west. In addition, a large modern outbuilding associated with the orchard has been erected nearby to the north. A former outbuilding/cottage to the south, between the farmhouse and Pump Lane, has been remodelled/rebuilt as a separate residence. Consequently, the immediate surroundings of the former farmhouse have comprehensively changed in form and character, with this group of built development forming a small residential enclave.

12.102 In my view, the heritage significance of the asset derives primarily from its built form, which has architectural, artistic and historic value. Its set back from the road, combined with the vegetated frontage, means that any contribution to that significance from its setting is principally derived from its associated garden plot, as opposed to its wider setting. Although Ms Wedd referred to views of Pump Farmhouse from Lower Rainham Road across the appeal site, through gaps in the roadside hedgerow, that was not apparent during the site visit. However, whilst its historic functional connection with the wider agricultural land has been severed, there is intervisibility in one view from the side elevation of the property to the northeast, across the appeal site to the Medway Estuary, where there is a notable absence of built form.[693] Whilst that part of the site was not functionally related to the farmhouse historically,[694] its current use as an orchard does, nevertheless, provide an experience of the listed building in a way that is illustrative of the relationship the asset once had with the wider landscape.

12.103 The illustrative masterplan shows a buffer of open space/planting to the northeast, between the asset and the proposed local centre, which would comprise buildings up to 10 metres in height. I appreciate that the development proposed would only be readily appreciated in that one view, but that is the only remaining view that allows for an appreciation of the asset in anything like its historic context. To my mind, that serves to heighten the importance of that relationship. That said, whilst there clearly would be some harm to the significance of the asset as a consequence of the development proposed, that harm would be less than substantial, towards the lower end of the range.

12.104 In terms of any contribution to significance by other, intangible qualities of setting, tranquillity makes no meaningful contribution in this instance, the farmhouse having been converted to a residence, with associated farm buildings etc having been replaced with 24 new dwellings in very close proximity.

Chapel House (grade II):[6.144-6.148, 6.163, 7.108]

12.105 Chapel House lies immediately adjacent to the northern extent of the appeal site. It dates from the mid-late C15th with later alterations. It has a timber frame with a rendered rear and weatherboarded left-hand end and a half-hipped tiled roof and left-hand hipped cross range. It has been subdivided to create two cottages.

[693] See Ms Wedd Figure 9 (page 38 of her proof)
[694] See Ms Stoten Plate 10 (page 22 of her proof)

12.106 The building is contained within its own land parcel that is larger than the historic curtilage - the original gardens have shifted from the south-west to the north-east of the building and further to the north-west. Although some of the land originally associated with Chapel House was located within the appeal site, that association has been severed and there is now no functional association between the appeal site and the heritage asset.

12.107 Its main, eastern façade fronts directly onto the northern end of Pump Lane, from where it is best appreciated, although it is also seen from Lower Rainham Road at the Pump Lane junction. The 1938 Tithe Map shows it apparently forming part of the then very loose-knit cluster of buildings along this part of Lower Rainham Road. Modern dwellings, constructed in the 1960s, lie immediately to the south-east of the asset, on the opposite side of the lane.

12.108 The rear of the listed building has some partially screened intervisibility with the appeal site. Filtered views of the appeal site are also co-visible with the asset from Lower Rainham Road, and the absence of built form within the appeal site is perceptible. From Pump Lane, co-visibility on the approach from the south is largely screened by roadside vegetation, although there are a couple of glimpsed, narrow aspect views in the immediate vicinity of Chapel House towards the site, beyond the garden areas.

12.109 The heritage significance of Chapel House is primarily derived from its built form, which has architectural, artistic and historic illustrative value, with any significance derived from its setting relating primarily to its immediate rather than wider setting. Its location as part of the settlement at Lower Rainham, albeit at the at the very eastern end, separated from it by Pump Lane, also has historic illustrative interest, as recognised by its inclusion within the Conservation Area. As two residences together, opposite modern residences and immediately fronting onto Pump Lane, close to its junction with Lower Rainham Road, it does not disclose any significant degree of tranquillity.

12.110 In my view, as part of the historic rural surrounds of Chapel House with which it has some intervisibility, and as an area which was part of the historic landholding of the asset, the land within the appeal site makes a minor contribution to the heritage significance of the asset. The appeal scheme would introduce new residential development up to 12 metres in height within around 80 metres of the asset, together with care/extra care accommodation up to 10 metres in height within around 50 metres.[695]

12.111 The character of the land, including some of the historically associated landholding would clearly alter, reducing the contribution of this area through historic illustrative interest. There would also be a corresponding increase activity levels in the wider vicinity. That said, the development would be set well back from the shared boundaries, behind an area shown on the illustrative plans as community orchard. Some views from and of the asset and its surrounds would change, and built form would be perceptible beyond the buffer in views from Lower Rainham Road and Pump Road.

[695] Ms Wedd proof (CD10.7) paragraph 6.13 **INSPECTOR'S NOTE**: the height of the care accommodation referred to in the proof does not reflect the revised parameters plan (ID29)

12.112 Historic England identified harm as occurring to the heritage significance of the asset through increased vehicular movements during the construction phase at the adjacent road junction. However, the development scheme would not utilise Pump Lane as a main access. Rather, the main access to the site would be via a new junction off Lower Rainham Road, to the northeast of the listed building, separated from it by the proposed community orchard.

12.113 Overall, I consider that the proposed development would result in less than substantial harm to the heritage significance of the Grade II Listed Chapel House, through changes to its setting. That harm would, in my opinion, be towards the middle of that range.

Bloors Oasts (non-designated asset):[6.150, 6.158, 7.101, 7.116] 696

12.114 Bloors Oasts lies to the south-west of Bloors Place and its associated listed buildings, between them and the appeal site, and is located outwith Lower Rainham Conservation Area. It dates from the very late C19th and, as noted earlier, has been converted to use as a dwelling. Its modest heritage significance is derived principally from its built form and history, its historic functional links with the surrounding land, including the appeal site, having long since been severed. Any significance it derives from its setting is, in my view, confined to its immediate surroundings, including the surviving buildings of the Bloors Place complex referred to earlier.

12.115 There are some filtered views of the asset across the site from Lower Bloors Lane[697] and from the bridleway, mainly through a gap in the conifer belt that bounds it for most of its length, although as noted earlier those latter views are of the white roof cowls in the distance, rather than of the main building itself.[698] As such, any contribution made by the appeal site to the heritage significance of the building is modest at best.

12.116 Whilst the development proposed would not interrupt the relationship between the Oast House and the Bloors Place complex, as asserted by the Council, those views from and of the asset and its surrounds would change as a consequence of the appeal scheme, with built form up to 10 metres in height located within some 20 metres of the rear boundary of the property.[699] I agree with both parties that any harm to the heritage significance of the asset would be limited/minor at most.[700]

Lower Rainham Conservation Area:[6.159-6.153, 7.69, 7.72, 7.103i) and iv), 7.111, 9.2]

12.117 No Conservation Area Appraisal is available for this Conservation Area to provide assistance in my consideration as to what determines its significance and value, although Ms Wedd's evidence includes a pamphlet that sets out, among other things, a brief explanation as to why it was designated.[701] It is a linear Conservation Area, located close to the north-eastern boundary of the

[696] Also referred to in the evidence as The Oast House or the Oasts. **INSPECTOR'S NOTE**: The building is not identified on the Council's Historic Environment Records (HER) but there was no dispute that it should be treated as a non-designated heritage asset.
[697] Eg Mr Etchells photo 10
[698] Mr Hughes poof Volume 2 photoviewpoint 14b (summer view) and Mr Etchells photo 27 (winter view)
[699] Ms Wedd proof paragraph 6.36 (page 20) **INSPECTOR'S NOTE**: the height of the residential development referred to in the proof does not reflect the revised parameters plan (ID29)
[700] The Framework test of less than substantial only applies to *designated* heritage assets.
[701] Her Appendix 7

appeal site, encompassing the historic core of the village. It comprises a mixed collection of dwellings, including the Bloors Place complex and Chapel House[702] and a pub, most of which buildings front onto the main road, which is very narrow at this point.

12.118 Whilst Lower Rainham has been characterised as a traditional Kentish hamlet in its original setting, surrounded by orchards and with the river in the vicinity,[703] there appear to have been very few farm complexes *within* the settlement. As such, whilst the historic core clearly had links to the wider landscape, that was largely through complexes such as Bloors Place that are now no longer used for agricultural purposes. In essence, any functional links with the surrounding countryside have been severed.

12.119 However, although the Conservation Area is generally inward looking, mainly experienced from the main road which it straddles, from where many of the historic buildings and their arrangement within the settlement can be appreciated, it also derives heritage significance from its setting. That setting allows for an understanding and appreciation of its significance, providing an historical context for the village, marking it as a small historically rural settlement. Indeed, that the settlement was designated as a Conservation Area appears to have been in part due to the rural environment within which the historic buildings are set.[704] To the north, that setting comprises the salt marsh and Estuary: to the south, it comprises the western half of the appeal site which separates the village from the built of edge of Twydall/Rainham. I do not agree with the appellant that the northern setting is somehow more important than, or has a stronger visual relationship with the settlement than that to the south – they are just different, each influencing the heritage significance of the Conservation Area in different ways.

12.120 The appeal site does not directly abut the southern boundary of the Conservation Area and I recognise that the development proposed would be set off the site boundaries allowing for some boundary planting. Even so, the appeal scheme would be clearly perceptible on approaches to the Conservation Area along Lower Bloors Lane and Pump Lane, and from the rear of properties on the southern side of Lower Rainham Road within the Conservation Area. There is also some seasonal intervisibility between the wider landscape and the rear of Bloors Place and Chapel House. I am in no doubt, in this regard, that replacing the historic landscape setting along the length of the southern side of the Conservation Area with new residential development and a school would have a marked and detrimental impact on the contribution that setting makes to the heritage significance of the Conservation Area. In essence, it would no longer be perceived as a separate small rural village related to its agricultural hinterland. Whilst the harm would, in the language of the Framework be less than substantial, I consider that harm to be very firmly towards the middle of that range.

Lower Twydall Conservation Area:[6.164-6.166. 7.70, 7.103(i)(iv)(v), 7.104(3), 7.112, 9.2]

[702] Neither York farmhouse nor Pump farmhouse lie within the conservation Area. Neither does the Oast House.
[703] Ms Stoten proof paragraph 6.127 (page 64)
[704] Pamphlet at Ms Wedd Appendix 7 (page79)

12.121 Again, no Conservation Area Appraisal is available for this Conservation Area. It is a linear Conservation area that lies adjacent to the western extent of the appeal site, at the southern end of Lower Twydall Lane. It encompasses the historic core of this small hamlet and contains a number of listed buildings, including York Farmhouse.

12.122 Whilst historically, three farm complexes were located here, the settlement has changed greatly through the residential conversion and/or rebuilding of several farm structures, together with the erection of new dwellings to the rear of York farmhouse, itself converted to three cottages, and the erection of 12 new dwellings at Little York Meadows (which lie outwith the Conservation Area). It now has an essentially residential, as opposed to agrarian character and is best experienced from the lane. Its heritage significance derives largely from the character and appearance of the historic street pattern, buildings and spaces within its boundaries. Although the Conservation Area is generally inward looking, mainly experienced from the lane which it straddles, it also derives some of its heritage significance from its rural setting, which comprises woodland, arable land and orchards, including the appeal site.

12.123 The appeal site adjoins the eastern edge of the Conservation Area at its southern end, with most of the site separated from the Conservation area by intervening agricultural land. At its closest, any intervisibility between the appeal site and the Conservation Area is only glimpsed, due to intervening mature vegetation at the rear of the curtilage plots. All in all, I agree with the Appellant that the development proposed, which would be set beyond a triangular landscape buffer (as shown on the illustrative plans) would result in less than substantial harm at the lower end of that scale.

Constellation of Assets and the Historic Landscape:[6.167-6.175, 7.98, 7.101-7.104, 7.117, 7.118, 8.37]

12.124 The Council contended that assessing the assets individually ignores significance of the historic landscape within which they lie which, in its view, should be treated as a non-designated asset in its own right and as a shared setting for the constellation of the other heritage assets referred to.

12.125 Historic England guidance[705] advises that the context of a heritage asset describes any relationship between it and other heritage assets which is relevant to its significance, including functional relationships, with contextual relationships applying irrespective of distance, sometimes extending well beyond what might be considered an asset's setting, and can include the relationship of one heritage asset to another of the same period or function.

12.126 York farmhouse, Pump farmhouse and the outbuildings at Bloors Place would all have related to historical use of the surrounding land, including the appeal site, for agricultural purposes. However, there is no indication that they were linked functionally with each other, as demonstrated by the respective landholding maps in the evidence of Ms Stoten.[706] The holding associated with Chapel House was also separate.[707] There is no obvious intervisibility between those buildings that might otherwise link them, and the distance between

[705] The Setting of Heritage Assets Good Practice Advice Note 3 – second edition (GPA3)
[706] Plates 2, 10 and 28 respectively,
[707] Plate 21

them, either across the appeal site or by road, does not provide any obvious appreciation of the buildings as some sort of related group to which group value might be ascribed. There is no reference in any of the list descriptions that refers to any group value. Neither do the buildings provide any identified waymarking function. In addition, only the Bloors Place outbuildings and Pump farmhouse date from a similar period, both York farmhouse and Chapel House being earlier in origin. All told, I am not persuaded that there is a meaningful interrelationship between these buildings in terms of their heritage significance that derives from the landscape between them.

12.127 As to the landscape itself, the Council described it as an historic north-south sequence of landscape and settlements, comprising:

- the River Medway and its sea defences and remnant wharves;
- estuarine mudflats and saltmarsh;
- Lower Rainham, built on the first solid geology that could carry buildings and the coastal road to Chatham;
- the open undeveloped farmland of the appeal site, with widely dispersed farmsteads and the hamlet of Lower Twydall;
- the railway line embankment which has provided a physical (and possibly psychological) barrier to development; and,
- the suburban development to the south of the railway.

12.128 Landscapes can clearly comprise heritage assets. Indeed, landscapes are cited as an example in the Framework definition of heritage assets. However, the definition sets out that it must have *heritage* interest.

12.129 Whilst the landscape sequence can be seen from the various aerial photographs of the site,[708] no identifiable, intrinsic heritage value is readily apparent that might merit its designation as a non-designated asset, so allowing it to be considered properly as such in the planning process. It does not feature, for instance, in the Council's HER. Moreover, until the related discussion at the Inquiry, no thought had been given as to exactly where the boundaries of the 'asset' might lie in order to be able to quantify any impact upon its significance or its setting. Initially it was suggested that it related to the red line of the appeal site, but during the discussion that was then extended to encompass the land between Lower Bloors Lane and Lower Twydall Lane, the railway and the Estuary, with the appeal site forming the substantive part of that.

12.130 Ms Wedd held that the 'story' told by the landscape sequence was the last remaining such sequence on this part of the Medway Estuary, explaining how the sparse scattered settlements and buildings came about. Be that as it may, that seems to me to essentially be a landscape character consideration as opposed to imbuing it with more than remote and ephemeral *heritage* interest. The heritage assets referred to above sit within that landscape and would have been informed by it, but I have had regard to their setting in my consideration of each of the assets individually. The distance between them does not make

[708] Eg ID3

a meaningful contribution to, or somehow amplify their heritage significance. On that basis, I consider that the historic landscape does not, in this instance, comprise a non-designated heritage asset and I have not treated it as such.

Conclusion on Heritage Assets

12.131 For the reasons set out above, I have found that there would be no harm to the heritage significance of York farmhouse, or the listed outbuildings within the Bloors Place complex. I consider that the harm to Pump farmhouse, Bloors Place, the listed walls and Lower Twydall Conservation Area would be at the lower end of the less than substantial range, with the harm to Chapel House and Lower Rainham Conservation Area in the middle of the spectrum. I have found very limited/minor harm to the non-designated asset that is the Oasts.

12.132 As set out above, I do not agree with the Council that the historic landscape here merits treating as a non-designated heritage asset. Should the Secretary of State come to a different conclusion, any harm to its significance would also need to be taken into account in determining the planning application as part of the overall planning balance.

12.133 In light of the forgoing, I consider that there would be conflict with policies BNE14 and BNE18, in that the development scheme would not preserve or enhance the setting of the two Conservation Areas and would adversely impact the setting of various listed buildings with consequent harm to their special interest and heritage significance. Paragraph 196 of the Framework requires that such harm be weighed against the public benefits of the scheme. Paragraph 197 requires the harm to the non-designated asset be taken into account. I return to these matters in my overall planning balance below.

Agricultural Land[6.29, 6.35, 6.264-6.315, 6.328, 6.339, 6,340, 7.74-7.93, 7.230, 7.236, 7.237, 8.7, 8.19, 8.23, 8.47, 9.1]709

12.134 The Agricultural Land Classification system classifies land into five grades, with Grade 3 subdivided into subgrades 3a and 3b. The Framework defines Grade 1, 2 and 3a land as the best and most versatile (BMV) land. Natural England confirms that BMV land is '*the land which is most flexible, productive and efficient in response to inputs and which can best deliver future crops for food and non-food uses such as biomass, fibres and pharmaceuticals.*'[710]

12.135 Around 96% of the appeal site is classified as either Grade 1 (excellent quality) or Grade 2 (very good quality), with the remainder comprising grade 3a (good to moderate quality).[711] It is a matter of common ground in this regard, that the appeal scheme would result in the loss of 51.5 hectares of BMV land, currently in use by the Appellant as apple orchards (with a cropping area of around 43 hectares).[6.280]

12.136 There are no current development plan policies relating to agricultural land and so national policy and guidance form the principal consideration.[6.264] Paragraph 170 of the Framework requires that planning decisions should

[709] See also CD6.6, CD6.11, CDs7.7-7.9, CD8.3 Appendices 13.1 and 13.2, CD8.4 Appendix 13.2(i) together with the proofs of Mr Pelham for the Appellant (CD10.5 and CD10.14) and Mr Lloyd Hughes for the Council (CD10.5) and the Agricultural SoCG (ASoCG) (CD11.5)
[710] Natural England Technical Information Note TIN049, p2 (CD7.8)
[711] Agricultural SoCG (CD11.5) and Mr Pelham proof (CD10.5) paragraph 2.11

contribute to and enhance the natural environment by protecting and enhancing soils and recognising the wider benefits from natural capital and ecosystem services, including the economic and other benefits of BMV land.

12.137 The Appellant's case was that the BMV status of the land does not reflect site specific, physical characteristics of the site. To that end, it was argued that no 'reasonable' profit[6.295] could be derived from agricultural/ horticultural use of the land, including non-food crops.[6.270-6.276, 6.295]

12.138 I agree with the Council that on the face of it, the contention that more than 50 hectares of BMV land cannot achieve a 'reasonable' profit, either by itself as a free standing enterprise, or as a satellite as part of a larger enterprise, is unexpected. Indeed, neither of the professional agricultural witnesses had come across such argument before. That is not to say, however, that that may not be the case in this instance, with each case falling to be determined on its own particular merits.[7.78]

12.139 A C Goatham and Sons (Goathams) is one of the largest growers of apples and pears in the UK,[712] currently farming over 2,400 acres of land[7.79] on a hub and satellite model,[713] all for top fruit (apples and pears) producing around 350 million apples a year and 55 million pears.[7.79(1)] This is a large, long established company, with over 67 years of experience of fruit growing in this part of the country.

12.140 The Appellant purchased Pump farm in 2011.[7.79(2i)] As experienced large-scale growers, the company would have been well aware of matters such as: the distance and nature of the routes between the site and the relevant hub farm,[714] as well as between the site and the processing and storage facilities at Flanders Farm, Hoo; the age, alignment and sizes of the various orchard blocks; the change in ground level levels at the northern end of Blocks 15/16 on the Pump farm side;[715] and local weather conditions, including hail incidents, all matters that are now relied on in arguing that the site is no longer viable.[6.296-6.299, 6.308, 7.79iv), 7.78] Moreover, after purchasing the Pump farm site, the Appellant invested by replanting orchard blocks there twice (4.45 hectares in 2011 and a similar area again in 2017)[7.79(2ii)] which costs would not have been insignificant.

12.141 The company's confidence in the orchards here is also evidenced by its purchase of the Bloors farm land (comprising the eastern half of the appeal site) in 2016,[7.79((2iii)] having had five years of experience cropping the Pump farm land on the opposite side of Pump Lane. Had the orchards on the Pump farm side been operating at a loss (or making below Mr Pelham's 'reasonable' profit level) and/or not thought to be capable of continuing to make a profit because of the reasons now relied on, the commercial sense in purchasing the additional orchard land at Bloors farm is brought into question, particularly given that: the distance and nature of the routes between the site and the relevant hub/packing facility would have been similar; the age, size and alignment of the orchard blocks would have been known; where it was known on the Appellant's own evidence that there had been hail incidents at the Pump

[712] Mr Lloyd Hughes Appendix RH08 page 11 of the supporting planning statement in relation to Gore Farm.
[713] Four of the farms are hubs, with the remainder, including the appeal site, being satellites
[714] The base from which machinery etc would be sent to work on Pump farm orchards
[715] See ID5

farm site in the three years preceding the Bloors farm purchase, which included the worst recorded year (2014);[716] and where the presence of the bridleway which crosses the land, dividing it into two, would have been known. Again, all matters that are now said to make the site unviable.

12.142 Given the experience of the Appellant in growing apples in this area, it seems anomalous to me that the company would have purchased these farms if cropping them as orchards was not considered to be a viable proposition. I am mindful in this regard, that the planning application now the subject of this appeal was made in June 2019, just three years after purchase of the Bloors farm land, just two years after replanting 4.45 hectares of orchards on the Pump farm land. Nothing has changed on the ground, as it were, in terms of the physical characteristics of the appeal site, its surroundings, or the local weather, since being purchased by the appellant.

12.143 I also understand that the company has, as recently as 2020, invested in Gore farm, located some 3 miles from the appeal site, including its continued use as orchards to support what it described as the ongoing expansion and improved efficiency of the business. As noted by the Council, it is a satellite farm growing Gala and Braeburn apples, among others. It is also of similar overall size, cropping area and yield as the appeal site, with similar small orchard block sizes (in part).[7.79(3)]

12.144 Notwithstanding that the burden of proof is on the Appellant to prove its case non-profitability, no accounts relating to the appeal site were available to the Inquiry (nor even to the Council's agricultural witness on a confidential basis) on the grounds of commercial sensitivity. I was advised that even if they had, since the Appellant has dispersed groups of orchards it would not be possible to identify site specific profit because a significant proportion of the costs associated with those sites are central costs (such as a central packhouse, central storage, central management and other labour, and administration) borne by the business in respect of all of the sites - they are not site specific. Mr Pelham agreed (in evidence in chief) that there were some economies of scale to be had in these regards.

12.145 If it is not possible to identify whether a particular site is profitable, that begs the question of how to tell if it is not profitable. Mr Pelham confirmed that although he had not been asked to undertake any assessment of the profitability of the appeal site as part of the larger enterprise he had a suspicion, based on his own experience, that the site had not produced any profit over the last ten years although, absent the relevant analysis, he could not be confident about that.[7.86] Were that the case, that again begs the question as to why the Bloors farm site was purchased just five years ago.

12.146 Relying again on his own experience, combined with data that Goathams was able to let him have sight of (but which could not be shared with the Inquiry)[6.287] Mr Pelham produced a theoretical lifetime financial model for a 2024 orchard replanting of a Gala dessert apple crop, using a coloured clone such Royal Beaut, across a site the same size as the appeal site, with the same soil quality and with the new trees all planted on a north-south alignment.[6.286-

[716] Table 1 in the proof of Mr Pelham (page 10) informed by Goathams.

6.295, 6.298, 7.87-7.88] [717] That indicates that excluding hail damage, and with the price of apples remaining static (a position contested by the Council) the orchards would return a lifetime profit of 2.39% of turnover.[6.294, 6.295] Once hail damage is taken in to account, the model shows that the theoretical site would return a loss.[6.298]

12.147 However, and if nothing else, that treats the site in isolation and seems to me to miss the benefits that accrue from the site being a part of the larger Goathams portfolio. In discussing the economic viability of this site, much was made of the prevalence of hail damage to crops, with reference to an average annual crop loss of 10.4% over the last nine years on the appeal site (based on Goathams evidence to Mr Pelham).[718] There was no suggestion in this regard, that the appeal site is any more (or less) susceptible to hail than any other of the Kent orchards run/managed by the company. In the absence of any evidence to the contrary, I have no reason to suppose that similar hail damage would not also be a feature at the Appellant's other farms (other than perhaps where hail netting might be employed). On that basis, absent any protection, it seems to me that the Appellant must accept annual losses across its orchard portfolio as a consequence of hail damage.

12.148 In essence, in any given year, some 'random' sites within the Goathams group may suffer from hail damage but, as part and parcel of a larger group of satellite farms, any losses sustained on those individual sites in any one year would, in the bigger picture, be compensated for by the ongoing profits from unaffected sites that same year as part and parcel of the company's ongoing operations. In other years, other sites may, or may not sustain such damage. Whilst an individual site may, in any one year, not make a profit because of hail damage it may not, given the random, variable and very localised nature of hail events, suffer that damage in other years when other sites in the 'family' might. This seems to be me to be a symbiotic relationship, where the whole of the group, in terms of viability, is greater than the sum of its parts.

12.149 In relation to apple prices, the Council referred me to data published by DEFRA concerning past and current trends.[719] That shows a rise in 'farm-gate' sale prices of some 3.33% (compound interest rate) for the period 2010-2019 for dessert apples in general.[720] In addition, the DEFRA evidence indicates that the weekly wholesale prices (ie not adjusted for farm-gate sales) for Gala apples have increased by some 5.12% between October 2011 and October 2020. I am mindful, in this regard that Goathams deal directly with the supermarkets. Either way, these are the only empirical figures before the Inquiry on this matter. Whilst the Appellant sought to portray these figures as being generally static,[6.305] I do not agree. I recognise that there is some variation year on year, with some years showing a decrease from the year before. Overall however, on the evidence that is before me, the average farm gate price per tonne for dessert apples has increased from £533 to £607

[717] See also Mr Pelham proof paragraphs 6.1- 6.13 and his Appendices 5 and 6
[718] Mr Pelham proof Table 1 (page 10) and paragraphs 3.16-3.22 and paragraph 6.9. This refers to incidents of hail in five out of the nine seasons that Goathams has been in occupation of the land (2012-2020).
[719] Mr Lloyd Hughes Appendix RH07. The DEFRA Horticulture Statistics 2019. These statistics cover area, production, value, imports and exports of horticulture crops from 1985 to 2019. (CD7.9)
[720]Mr Lloyd Hughes Appendix RH07 Table 6 **INSPECTOR'S NOTE**: ID48 confirms that the dataset that supports these figures has been adjusted to reflect 'farm-gate' prices. The Gala apples wholesale average price and prices chart 2010-2020 are not so adjusted.

(2011-2018). I am mindful, in this regard, that Gala apples only feature in those statistics for 2016, 2017 and 2018. It is over those three years that the prices started rising after a dip (although I recognise that there was slight drop in 2017).

12.150 On the evidence of the Council, were the static sale price of Gala apples in the lifetime cropping model to be replaced with a 2% annual price rise (reflecting the historic rise in dessert apples generally referred to above) then, even allowing for 10.4% hail damage, the model shows a lifetime profit in the region of £89,634, which represents a 'reasonable' profit as a percentage of a turnover of £749,983.[7.87(3vi)] [721] Even a price rise of 0.6% per annum, well below the average historic price rise for dessert apples referred to above) would still return a reasonable profit as a percentage of turnover.[7.87(3vi)]

12.151 Mr Pelham also looked at the suitability of the appeal site for other enterprises none of which, in his experience, could realise a reasonable profit. These included other tree fruit and soft fruit, field vegetables and salad crops, cereals and potatoes, hops, livestock, non-food crops (biomass and pharmaceutical crops). That evidence was not robustly challenged by the Council (on the basis that in its view, continued intensive orchard use of the land could return a profit) other than to point out that the reference to the price of vermin proof fencing around the site would, on the appellant's figures, be some £35,00-£45,00 as opposed to £350,000-£450,000 as referred to by Mr Pelham,[722] casting some doubt on the accuracy of his forecasting in that regard. For the most part though, the evidence before me on this was very generalised, including little in the way of any actual costed figures relating to the introduction of other uses on this particular site.

Conclusion on Agricultural Land

12.152 Based on DEFRA figures, there are over 90,000 hectares of BMV land in Kent.[723] Nevertheless, I am in no doubt that the loss of more than 50 hectares of such land, which would be a consequence of the development proposed, is a significant matter, particularly given that such land is a finite resource. However, the Framework does not advocate against the loss of such land. Rather it indicates that its economic and other benefits be recognised.

12.153 In this case, the evidence that was before the Inquiry indicates to me, that even if the site is not capable of returning a reasonable profit were it to be put to any other agricultural/horticultural or related uses I have found that, on the evidence before me, there is good prospect for the land to be farmed in such a way that it realises a reasonable profit. That is a matter that will need weighing in the overall planning balance.

12.154 Should the Secretary of State consider that there is no reasonable profit that can be made from this significant area of BMV land, that too would need weighing in the overall planning balance.

[721] Mr Lloyd Hughes Rebuttal proof (CD10.17)
[722] Mr Pelham proof paragraph 7.18
[723] Mr Pelham proof paragraph 8.13

Highways[6.185-6.263, 6.332-6.3336, 7.119-7.199, 7.228, 8.14, 8.15, 8.20-8.22, 8.27-8.35, 9.1, 9.2] [724]

12.155 Local Plan policy T1 is permissive of new development proposals where, among other things, the highway has adequate capacity to take the additional traffic and where they would not add significantly to the risk of road traffic accidents. In addition paragraph 108c) of the Framework seeks to ensure that any significant impacts from the development on the transport network (in terms of capacity and congestion) or on highway safety, can be cost effectively mitigated to an acceptable degree. Paragraph 109 goes on to confirm that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

12.156 There was no agreement as to what might comprise the highway/highway network for the application of policy T1 or the Framework policies. The Appellant suggested that they require consideration to be given to the impact of the development over the whole of the Medway authority area, as opposed to parts of the network, with the Council taking a more focussed approach.

12.157 The Local Plan gives no indication as to what comprises the 'highway' in terms of the extent of the area over which consideration is to be given to implementation of the policy. Neither is there anything in the Framework to define what might comprise the extent of the 'transport network, or the 'road network,' nor indeed is there any quantification or threshold as to what may comprise a 'severe' impact to assess at what point, if any, an increase in congestion would amount to a severe residual cumulative impact. That seems to me to allow for site specific circumstances to inform matters on a case by case basis. Had those drafting the policy and the Framework intended the considerations to apply to a specific area, it surely would have said so.

12.158 In this case, I see no reason why the refence to capacity in policy T1 should relate necessarily to the impact of a development on the capacity of every single part of the district-wide highway network, when the traffic impacts of a development are most likely to be felt closest to the source. The same goes in relation to the application of paragraphs 108 and 109 of the Framework. That effects may only be felt over a small part of the network does not mean, in my view, that they cannot also be severe. Indeed, it is hard to imagine anything other perhaps than a new settlement, or the cumulative effect of housing growth in a Local Plan being of a scale to potentially to trigger the threshold of severity referred to in the Framework over an Authority-wide area. None of the appeal decisions dealing with the matter of severity of impact in highways terms that were brought to the attention of the Inquiry dealt with the impact over the entirety of an Authority's network.[725] I am content, in this regard, that it is appropriate to focus on the areas of greatest potential traffic impact in order to assess the scheme against the relevant policies.

12.159 Figure 1 in the Final Transport Assessment provides a useful map of the local road network.[726] In brief, the appeal site straddles Pump Lane which runs north to south between the B2004 Lower Rainham Road and Beechings Way

[724] See also eg the proofs of Mr Tucker for the Appellant (CD10.4, CD10.13, ID36) and for the Council, the proofs of Mr Jarvis (CD10.10, CD10.16 and ID52) and Mr Rand (CD10.9, ID35)
[725] Eg CDs 4.8 and 4.14 Also Appendix B to the proof of Mr Rand
[726] CD8.3 Appendix 10.1

respectively. To the east, as the B2004 enters Lower Rainham, where the width of the single carriageway enters a pinch-point, the route through the village is managed by a series of traffic light controls, incorporating shuttle working and build-outs. To the west, the B2004 runs to a roundabout junction with Yokosuka Way (which links the roundabout to the A2 to the south) and the A289 Gads Hill to the north west.

12.160 To the south, Pump Lane passes under the rail line, where the carriageway narrows and shuttle working for two-way car passage is exercised, before joining Beechings Way where, via a staggered junction, it continues southwards to the A2 London Road. Beechings Way is an important local distributor road providing access to a number of residential streets within the local vicinity, connecting the eastern edge of Gillingham with the A2 corridor. With limited options for crossing the River Medway, the A2 and the A289 are two of the key east-west arterial routes in Medway. Together with other A roads in the locality, they form the principle road network within the area, also servicing the M2 and M20.

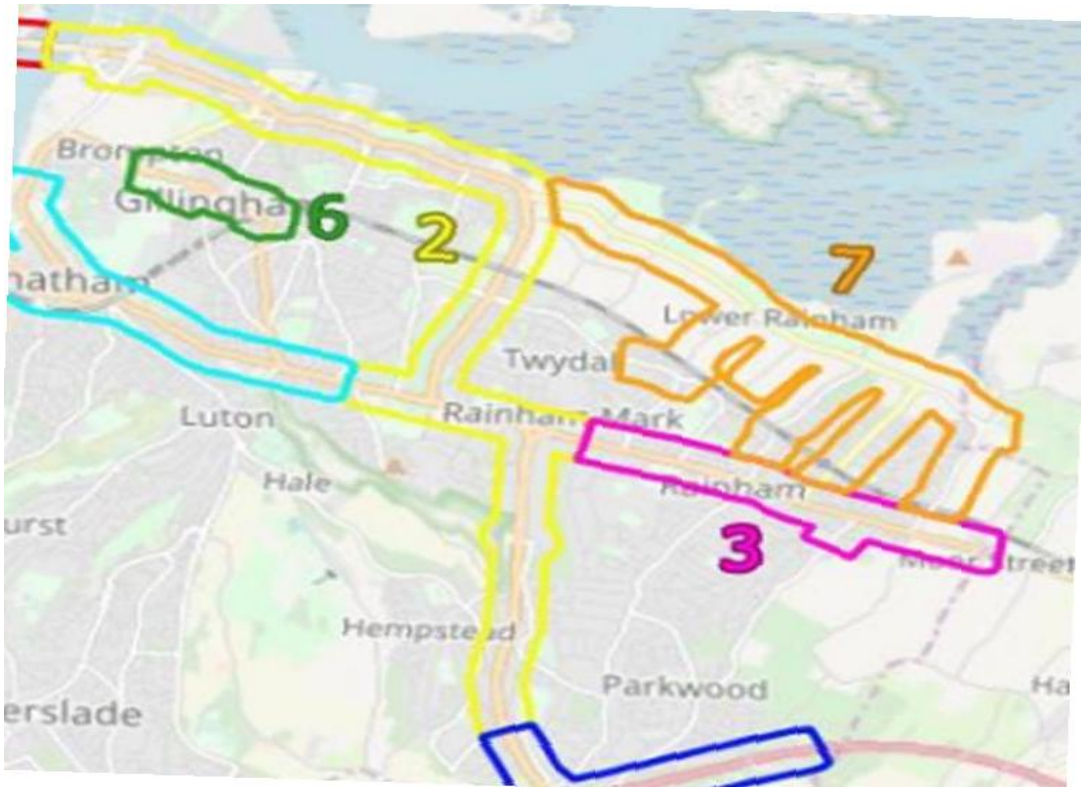
12.161 The local highway network, including key arterial routes, is already heavily congested, particularly during the AM and PM peaks.[6.336, 7.119, 7.140, 7.167, 7.172, 7.177, 8.14, 8.20, 8.27, 8.30, 8.35, 8.40, 9.2] In support of the proposal, the Appellant proposed a number of mitigation works, as amended during the Inquiry, comprising:

- Lower Rainham Road/Yokosuka Way/Gads Hill roundabout: widening of the eastern, Lower Rainham Road approach to provide a two-lane entry with kerb realignments on the southern side of the road and associated amendments to the central splitter island, plus appropriate destination markings to allow for two lanes of right-turning traffic from the eastern arm (Dwg No 20230-10 Rev B)
- A2/Will Adams Way/Ito Way roundabout: revised lane markings to accommodate three lanes of traffic on the southern circulatory carriageway (Dwg No 20230-18B).
- Bloors Lane/A2 London Road/Playfootball signalised junction: additional ahead lane on the eastbound approach (Dwg No 20230-09 Rev A).
- Bowaters Roundabout: reconfiguration of the Toucan crossing to the east of the roundabout to include staggered refuge island, revised signal timings and additional lane capacity on the roundabout through new lane markings (Dwg No 20230-17B).
- Otterham Quay Lane/Meresborough Road/A2 signalised junction: revised timings.
- Pump Lane rail underbridge: revised signal shuttle arrangement (Dwg No 20230-05-1F).

12.162 There are two competing appraisals before the Inquiry that deal with traffic impacts. The Council assessed highways impacts through the use of its strategic Medway Aimsum Model (MAM),[727] which consists of eight main sub-networks covering the whole local authority area, operating at macroscopic

[727] Medway Council Transport Assessments Guidance Note (2018) Mr Rand proof (CD10..9) Appendix A

and microscopic levels simultaneously. The modelling assessment undertaken in relation to the appeal scheme analyses the impact of the development on the three subnetworks closest to the site, (subnetworks 2, 3 and 7)[728] including the mitigation measures referred to above. The appeal site lies within subnetwork 7.



12.163 The Appellant's assessment is based on isolated junction modelling (using ARCADY and LinSig)[729] at locations where it is predicted that the most significant traffic impacts are likely to be felt, informed by the Council's sub-networks and MAM outputs.

12.164 In terms of inputs to the models, the Council contends that there would be around an additional 800 two-way trips on the highway network in both the AM and PM peaks (around 13 additional trips every minute). The Appellant's figures, derived from the TRICS database, suggest an additional 585 two-way movements during the AM peak, with an additional 558 two-way movements during the PM peak[730] (around 9.5 additional trips every minute).[731] To assist the Inquiry, the Council ran its model using the appellant's trip rates (scenario 6a in the evidence) and presented its case on that basis. Other inputs to both models, including committed development, TEMPRO growth forecasts and future forecast years were all agreed.

12.165 The results of each assessment are significantly different. Simply put, if the Appellant's modelling outputs are to be preferred which suggests that, with the proposed mitigation, none of the modelled junctions would be operating over

[728] Figure 1 in the proof or Mr Rand
[729] ARCADY is an industry tool used to model the capacity of roundabout junctions. LinSig is used to model the capacity of signalised junctions.
[730] ibid Section 5 Table 30 (page 36)
[731] See Technical Note 2 (CD6.7)

capacity, then the conclusion would be that any residual cumulative impacts on the road network would not be severe. If the Council's outputs are preferred, then even with the mitigation measures proposed, the residual cumulative impacts would, in its view, be severe

12.166 Both models are very different and assess different aspects of the highway network and the way in which it functions. A significant amount of the highways evidence, and the related time at the Inquiry, was spent on the merits and deficiencies of each modelling approach. Needless to say, each party highlighted the benefits of its own preferred modelling and the shortcomings and apparent anomalies in terms of validation/calibration and outputs of the other's. It is necessary however, to come to a view as to which approach should be preferred in this case.

12.167 In general, it seems to me that in focussing on isolated junctions, the evidence of the Appellant may not have fully embraced the complexity of the already congested highway network around the site.[732] That is particularly important in this instance, given strategic scale of the development proposed and the interaction of the junctions and the links between them. The MAM, in principle at least, enables an assessment of the complex traffic interactions of this large and congested urban area, taking account of a range of effects that arise not only at several junctions but also, importantly, key routes. By their very nature, isolated, junction assessments cannot account for such matters on that holistic scale.[733]

12.168 Taking just a couple of examples: the MAM allows for congestion and travel times in some areas causing drivers to redistribute across the network. Whilst the Appellant suggested that this is dealt with in Technical Note 3 (TN3)[734] it is not readily apparent from the Note how those diversionary impacts have been accounted for in the Appellant's modelling. The MAM also takes account of individual driver behaviour such as lane changing and individual acceleration/ deceleration, as well as link capacity issues, including any blocking-back at junctions which may affect the performance of the links and other junctions on the travel corridors, and thus the capacity of that part of the network. I agree with the Council that this is a phenomenon which is particularly evident in urban areas, where a network is already congested and where there are multiple junctions in close proximity.[7.172] A further example, explored in more detail below, relates to the mitigation measures proposed for the Lower Rainham Road approach to the A289 Gads Hill/Yokosuka roundabout. Whilst the mitigation reduced impacts on Lower Rainham Road to less than severe, it had a significant knock-on effect for traffic on the northbound Yokosuka Way approach which was not accounted for.

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[732] The junctions modelled by the Appellant comprised the Lower Rainham Road/Yokosuka Way/Gads Hill roundabout, Beechings Way/Yokosuka Way/Cornwallis Avenue/Ito Way roundabout, Will Adams roundabout, Bowaters roundabout, Pump Lane/A2 junction, Bloors Lane/A2/Playfootball junction, the two Beechings Way/Pump Lane junctions, Lower Rainham Road/proposed site access junction and the proposed Pump Lane underbridge shuttle. (see eg TN4 (CD12.6))

[733] Table 2 of Mr Jarvis original proof (CD10.10) identifies the links, junctions and routes close to the development site that were calibrated and validated in the MAM. In addition to the above, the MAM looked at Otterham Quay Lane/Meresborough Road junction, plus link counts on Lower Rainham Road, Sovereign Boulevard (A2), London Road (A2) Ito Way, Hoath Way, Yokosuka Way, Pier Road/Gads Hill, and route travel times on the A2 and the A289/A278.

[734] CD6.11

12.169 It was also confirmed during the Inquiry that the Appellant's own traffic surveys stopped counting when a queue extended back through the next junction and/or reached 15. That seems to me to confirm that this is already a problem on this part of the network. Even with the mitigation measures proposed, the Council's microsimulation videos suggest that there would be a deterioration in journey times and network statistics, caused by a combination of the junctions being overcapacity combined with link capacity issues. This is particularly true on the A2 corridor where there are a number of potential causes of delays on the links. The isolated junction models do not account for that wider linked effect.

12.170 The Appellant's evidence suggested that as its modelling did not show any of the junctions to be operating over capacity (based on volume/capacity sections showing that none of the modelled junctions would be operating at over 90%) then none would cause queuing which would block back along a link and/or through another junction.[1] However, it does not take account queuing at other interacting junctions that were not modelled - the MAM model looks at the interaction of all the junctions within any subnetwork and the interaction of their performance with each other. Moreover, as is clear from the microsimulation videos, queuing and blocking-back can also be affected by other features on the links between junctions, although I appreciate that such effects are more transient. I am mindful, in this regard that, as confirmed during the Inquiry, the Appellant's own traffic surveys stopped counting when a queue extended back through the next junction and/or reached 15.

12.171 Even with the mitigation measures proposed, the Council's microsimulation videos suggest that there would be a deterioration in journey times and network statistics caused by a combination of the junctions being overcapacity combined with link capacity issues. This is particularly true on the A2 corridor where there are a number of potential causes of delays on the links. The isolated junction models do not account for that wider linked effect.

12.172 In my view, the complex inter-relationship of the various components of the network are not fully tested in the isolated junction modelling approach. Therefore, whilst recognising that there are some apparently anomalous outputs from the MAM I tend, on balance, towards the more holistic approach that informs the Council's evidence on this.

12.173 I turn now to the predicted effects on the identified subnetworks based on the Council's modelling. In essence, and noting that the identified impacts are based on the Appellant's trip generation figures which are lower than those suggested by the Council) the model outputs indicate the following:

12.174 Subnetwork 2: this is the largest of the three subnetworks, principally comprising the A289, A2 and A278, being the main urban strategic distributor roads (all dual carriageway). Even in the 2028 reference case, two of the junctions within that subnetwork, including the Lower Rainham Road/Yokosuka Way roundabout, would be over capacity, both exceeding by some margin the highest level of saturation (LoS) rating of F (alternatively a RFC (ratio of flow to capacity) of more than 1) which can be equated to a severe residual impact. With the appeal scheme, the MAM indicates that in the AM peak, three further

[1] XIC Mr Tucker

junctions would operate over capacity, including the key Will Adams and Bowaters roundabouts on the A2, exceeding an LoS F rating. In the PM peak, four junctions, including Bowaters, would operate over capacity.

12.175 Journey times would also increase significantly from the 2028 reference case. Westbound journey times would increase by over 5 minutes (80%) in the AM and PM peaks, with eastbound journey times increasing by over 10 minutes (89%) in the AM and over 8 minutes (119%) in the PM peaks, giving rise to journey times for a 3.3km stretch of the A2 of around 12 minutes heading westbound in both peaks, over 21 minutes heading eastbound in the AM peak and over 15 minutes heading eastbound in the PM peak. Journey times on the A289 are also significantly worsened, with an increase in journey times of between 27%-100% when compared with the 2028 reference case.

12.176 The impact of the development is also felt on the overall network statistics, with travel times increasing in the AM peak by 23% relative to the reference case (from 3.2 minutes to almost 4 minutes in terms of minutes per km); delays increasing by 38% (from almost 2 minutes to 2.75 minutes in terms of minutes per km); and mean queues by 73% (from 489 vehicles to 846). Similar increases are experienced in the PM peak.

12.177 The latest iteration of proposed mitigation for the Lower Rainham Road/Yokosuka Way/Pier Road roundabout allows for two lanes of westbound traffic on the Lower Rainham Road (which lies within subnetwork 7) to turn right onto the A289. The Council accepted that this would reduce queuing on Lower Rainham Road to less than severe.[.242][735] However, the originally modelled impacts (which were severe) would shift to the southern A289 arm of the roundabout, which forms part of subnetwork 2. The Council's evidence[736] predicts a lengthy queue on the northern approach of the A289/Yokosuka Way, which has implications for travel times on that link. For instance, in the 2028 reference case, the journey from the A278 (Hoath Way) to the Church Street roundabout on the A289 (Pier Road) which traffic uses the northbound approach to the A289/Yokosuka Way roundabout – a journey of approximately 5km - would take just over 10 minutes. That would increase to some 19 minutes and 31 seconds with the now proposed mitigation in place,[737] with the junction performance being classified as having an LoS rating of F, equating to a severe residual impact

12.178 Based on those statistics and being mindful that, importantly, this network incorporates two of the key arterial routes in the local highway network, I am in no doubt that the residual cumulative impacts on this subnetwork would be severe.

12.179 Subnetwork 3: this is the smallest of the three networks, comprising a roughly 3km stretch of the A2 between Bowaters roundabout to a point past Otterham Quay Lane. Other than a short stretch between Bloors Lane and Century Road, this is a single carriageway route. The MAM indicates that whilst the proposed mitigation would in fact improve journey times on this part of the A2, there would be a knock-on effect, transferring delays to the side

[735] Mr Rand EiC
[736] Mr Jarvis Addendum proof (ID52) Figure 12
[737] ibid paragraph 4.7

roads, including Meresborough Road and Moor Park Close. The A2/Otterham Quay Lane/Meresborough Road junction would operate over capacity in both peaks, with the delays at the junction being particularly extensive in the PM peak.

12.180 However, among other things, the Appellant took particular issue with the statistics for the Meresborough Road and Moor Park Close arm. Whilst Moor Park Close, which serves approximately 80 dwellings,[738] contains numerous short cul-de-sac offshoots, it has direct access onto both the A2 and Meresborough Road, by-passing the traffic light controlled A2/Otterham Quay Lane/ Meresborough Road junction. It is not, of itself, a cul-de-sac[739] as suggested by the Appellant. That said, I agree with the Appellant that the Council's figure of 300 associated traffic movements as suggested in the 2028 reference case seems, on a common sense approach, to be excessive, given the number of dwellings, noting that west and southbound traffic from the Close can avoid the junction altogether, and noting that Meresborough Road does not link to any significant residential areas.

12.181 Mr Jarvis sought to explain this by a Note to the Inquiry.[740] However, whilst that confirms that the MAM does not model the link as a cul-de-sac, it was not clear why traffic associated from other development within the relevant centroid is also modelled as using Moor Park Close/Meresborough Road, when there is no direct link between them.

12.182 In any event, the most significant point in relation to this subnetwork to my mind, is that the mitigation measures would mean that journey times on the A2 would be improved. Whilst queuing may, as a consequence of that, increase on the Moor Park Close/Meresborough Road arm of the junction, sufficient doubt is cast over the relevant figures for that arm of the junction and I have not taken the residual cumulative impact identified for that arm to be severe.

12.183 Subnetwork 7: this includes that part of the B2004 Lower Rainham Road between the Lower Rainham Road/Yokosuka Way/Gads Hill roundabout to the west and Otterham Quay Lane to east, together with Pump Lane, Lower Bloors Lane, Berengrave Lane, Station Road and Otterham Quay Lane. The MAM identified the main problem within this network to be westbound traffic (towards Gillingham, Chatham and the Medway crossing) in the AM peak.

12.184 The modelling suggests that, as a consequence of the development proposed, flows would be expected to virtually double, from 582 vehicles per hour in the 2028 Reference Case, to 1,032 vehicles/hour in Scenario 6A (ie based on the Appellant's trip data). However, the latest iteration of proposed mitigation for the Lower Rainham Road/Yokosuka Way/Pier Road roundabout allows for two lanes to turn right onto the A289. The Council accepted that this would reduce the impacts on queuing on Lower Rainham Road to less than severe.[6.240][741]

12.185 Drawing these findings together, I consider that the development proposed would have a significant adverse impact on the transport network, particularly

[738] See eg aerial photograph at ID54
[739] Eg Figure 15 in ID34 page 33
[740] ID54
[741] Mr Rand EiC

during the AM and PM peaks, in terms of junction capacities, journey times, and overall network statistics on corridors such as the A2, A289 and A278 ie subnetwork 2. The linked residual cumulative impacts in this case would, in my view, be severe, bringing the scheme into conflict with policy T1 of the Local Plan and paragraphs 108 and 109 of the Framework, which together and among other things seek to prevent such harm.

12.186 In support of its case, the Appellant drew attention to a Council issued decision in relation to a large residential led scheme on land at East Hill, which was issued during the April adjournment.[6.209-6.211] [742] Although the application was not refused on highway grounds, I was directed to a reference in the officer's report setting out that the applicant in that case undertook an approach of considering MAM derived flows, providing a consideration of net changes in traffic flows from the model, and then providing individual junction models (Arcady and LinSig) of each junction, which approach was accepted by the Council in that case.

12.187 The Council's written response,[743] as supplemented orally at the Inquiry by Mr Jarvis, suggested that East Hill was distinguishable on the basis that no 'blocking back' was evident and separately, because wider, net transport betterment of the scheme had been shown, including provision of link road.

12.188 I agree with the Appellant that the betterment point carries little weight in relation terms of the matter at hand, since it doesn't go to the robustness of the assessment in principle. However, it is not clear whether blocking back along the links between junctions in that case was an issue or not. It has been shown to be an issue in the instant appeal and I am satisfied that the MAM approach is the more appropriate model through which to consider those effects on the performance of the linked highway network. A such, that case is not directly comparable to this and it does not indicate that the Appellant's modelling is to preferred in all the circumstances of this particular case.

Highway Safety

12.189 Although no longer a matter of concern for the Council,[1.10, 6.196, 6.198, 6.262] local residents continue to have concerns in this regard.[8.31, 9.2] However, as confirmed by Mr Tucker,[744] the recorded number of accidents for the area, including the A2/Ito Way roundabout (Will Adams roundabout) the A289 Yokosuka Way/Cornwallis roundabout, Lower Rainham Road and Pump Lane, is not significant in the light of national accident rates. In the absence of any empirical evidence to substantiate the concerns raised, and noting that the mitigation measures referred to above all meet the requirements of the latest Stage 1 Safety Audit (April 2021)[745] there is no good reason to suppose that the traffic movements that would be a consequence of the appeal scheme would have a material adverse impact in terms of highway safety. Indeed, the local highway authority raises no objection on these grounds. I find no conflict therefore, with Local Plan policy T1 or paragraphs 108b) and 109 of the

[742] ID37 see also paragraph 4.3 of Mr Jarvis proof (CD 10.10)
[743] ID41
[744] See eg Section 6 of the Transport Assessment Addendum attached to the Appellant's Statement of Case and related Appendix D (CD8.1)
[745] ID40 See also Section 6 of the Transport Addendum Statement September 2020 (CD8.3 Appendix 10.1)

Framework, which together and among other things seek to prevent adverse impacts on highway safety.

Conclusions on Highway Matters

12.190 I find no harm in terms of highway safety.

12.191 In terms of the highway modelling evidence, whilst acknowledging the shortcomings and apparent anomalies highlighted by the Appellant, on balance, I prefer the outputs of the Council's more holistic MAM approach (which models the interaction between junctions, links and journey times) over the Appellant's isolated junction modelling approach, which itself was also the subject of identified shortcomings and anomalies.

12.192 Whilst I have found that the residual cumulative impacts on subnetworks 3 and 7 would not be severe, that is not the case for subnetwork 2. The residual cumulative impacts on that subnetwork would, in my view, be severe, particularly during both the AM and PM peaks. I recognise that those impacts are confined largely to the peak hours and that the subnetwork forms only a part of the wider network. That does not, however, mean that the impacts cannot be considered as severe in their context. As such, even taking account of the mitigation measures proposed, I find that the appeal scheme would have a severe residual cumulative impact on the local highway network. There would be conflict in this regard with Local Plan policy T1 and paragraphs 108 and 109 of the Framework.

12.193 In support of its case, the Appellant drew attention to the constrained urban nature of Medway and the need to deliver some 28,300 hones by 2037.[6.336] I recognise that such development would need to utilise the urban road network and draw upon its capacity. It is suggested that if the appeal were to fail, then more housing would have to be provided elsewhere, with highways capacity issues displaced rather than prevented. That may well be the case, but each scheme needs to be considered on its own merits. Without knowing in detail what any other impacts might be elsewhere, this is not a consideration that takes the Appellant's case any further. Any highways impacts consequential upon that scale of development would be better addressed on a strategic basis, through the emerging Local Plan. I am mindful for instance, that the Council has been awarded £170m from central government, through the Housing Infrastructure Fund (HIF) for infrastructure improvements to enable delivery of the Local Plan, including road infrastructure (consisting of six phases, involving strategic interventions on the local highway network to help unlock strategic development.[7.213]

12.194 Should the Secretary of State prefer the modelling employed by the Appellant and/or disagree with my conclusion in relation to subnetwork 2, that would lead to a finding of less than severe cumulative impacts for the reasons set out in paragraphs 6.185-6.263 above.

Other Matters

12.195 Separated by Lower Rainham Road and agricultural land is the Medway Estuary and Marshes SPA, Ramsar and SSSI, a European Protected site, which lies approximately 250m to the north of the appeal site. It has been designated for the complex and mix of coastal and intertidal habitats which

support assemblages of winter and breeding birds as well as migratory birds and various plant species.

12.196 As set out at the start, one of the Council's reasons for refusal related to the effects of the development proposed on the integrity of the protected site, subsequent supplementary information was provided on this, in consultation with Natural England. As set out at paragraph 5.1(1) of the General Matters SoCG,[746] on the basis of necessary planning conditions and an executed section 106 agreement to secure the mitigation required by Natural England, the Council did not pursue this reason for refusal at the Inquiry. Since there was no dispute between the main parties on this matter, ecological impact is not identified as a main consideration in the Report.

12.197 Annex E below sets out my assessment of the evidence presented in this regard. I found that the appeal scheme would not be likely to have a significant effect on any of the identified European/international designated sites through lighting, noise, hydrological impacts or physical damage and degradation to habitats when considered alone or in combination with other plans or projects. However, in the absence of avoidance or mitigation measures, there remains potential for the development proposals to lead to a significant effect on the Medway Estuary and Marshes SPA/Ramsar site via disturbance effects and, on a precautionary basis, to contribute towards such an effect at other of the coastal international/European designated sites. In addition, further detailed assessment is required in respect of NOx associated with road traffic emissions in relation to this site. An Appropriate Assessment under the terms of the Conservation of Habitats and Species Regulations 2017 (as amended) is therefore required. Such an Assessment is to be carried out by the Secretary of State in this instance, as the competent authority under the Regulations. Should the Secretary of State be minded to allow the appeal, Annex E sets out information to help inform that Assessment

12.198 Local residents raised concerns in relation to air quality, in particular in relation to traffic generation.[6.261, 8.20, 8.31, 8.40-8.42, 9.1, 9.2] This matter is dealt with in more detail in Annex E below, albeit in relation to impacts on the European protected sites. Suffice it to say here, that there was no objection from the Council in air quality terms and the concerns raised were not supported by any substantive evidence. Whilst I fully appreciate local concerns, I am of the view (as set out in Annex E) that there would be no adverse air quality implications arising from the appeal scheme, subject to conditions. On this point, the recommended Travel Plan condition (condition 41 in Annex D below) includes provision for the monitoring of air quality.

12.199 Other appeal decisions and court judgements were put to me in evidence by the main parties. Each case turned on its own evidence, as does this case. I have had regard to these, drawing specifically on them where necessary. However, because of the individual site-specific nature of those other cases, none of those schemes and their planning context are substantively similar to this case. As such, I have given limited weight to them in determining this appeal.

[746] CD11.1

Benefits of the Development Proposed[6.5, 6.98, 6.103, 6.118, 6.185-6.188, 6.316-6.323, 7.200-7.209] [747]

12.200 A number of what are described by the appellant as benefits in fact relate to an absence of harm, for instance high quality design including landscaping and the provision of a local centre and village green to support the function of the development itself and create a community 'feel' and the accessibility of the location. As such, they attract no positive weight in the planning balance. For the purpose of clarity, where there is positive weight to be ascribed, I have used the following scale: limited, moderate and substantial.

12.201 The housing land supply range identified by the parties is between 1.78-3.03 years.[5.1, 6.6] Whichever figure is used, the parties are agreed that as a minimum, the shortfall is significant.[748] Even on the Council's figures, and recognising the steps it is taking to address that shortfall both in the short and longer term,[7.203-7.207, 7.214] I consider the weight to be afforded to the extent of the shortfall to be substantial.

12.202 There is also an acute need for affordable housing.[6.2, 6.5, 6.8, 6.14, 6.18-6.21, 6.317, 6.331, 7.208] [749] In light of that, the delivery of at least 25% of the residential units as affordable accommodation (equating to no less than 313 units if 1,250 homes come forward through the reserved matters applications)[11.3] [750] attracts substantial weight.

12.203 The development would contribute to employment provision, primarily through construction and related jobs over a ten year period for a range of trades and occupations, including opportunities for training and skills development. In the longer term, although not formal employment uses, the school and the care homes, together with the facilities in the local centre, would all provide a range of employment provision. Future residents would also contribute to the economy through local expenditure, supporting shops and local businesses. The weight to be given to these benefits is substantial.

12.204 The current use of the appeal site as a commercial orchard includes a spraying and fertilisation regime that suppresses biodiversity on the site. The appeal scheme includes a significant amount of planting and landscaping, including a buffer zone around the around the site and landscaping between the different development areas to create connected habitats to allow movement of animals through the site. Together with enhanced hedgerow planting, a mix of grassland habitats, tree planting etc, as well as garden areas and the swales that would form part of the surface water drainage works on the site, the development would result in significant improvements in terms of ecology and biodiversity. Indeed, one of the suggested conditions secures at least 20% biodiversity net gain.[10.10] I consider that the benefits secured in this regard attract substantial weight.

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[747] See also eg the Appellant's Planning Statement (CD5.11) and Statement of Case (CD8.1) the proofs of Mr Parr for the Appellant (CD10.1 and CD10.12) and Mr Canavan for the Council (CD10.6) and the Main Matters SOCG paragraph 5.2 (CD11.1)
[748] Main Matters SoCG paragraph 5.1(8)
[749] ID45
[750] ID14b

12.205 The vehicular connection between Beechings Way to the south (on the far side of the railway line) and Lower Rainham Road to the north via Pump Lane is said to be improved. This is an existing narrow lane, single vehicle width in places. The appeal scheme introduces two new junction points along the lane where the proposed estate spine/loop road crosses it, necessitating significant realignment at those junctions. I am not persuaded, in this regard, that there would be any knock-on improvements as such for existing residents in this regard, who would either have to negotiate both those junctions, or turn off onto the spine/loop road and wend their way through the proposed housing development to a new junction on Lower Rainham Road.

12.206 However, the appeal scheme does provide for signalisation of the section of restricted carriageway beneath the railway at the southern end of Pump Lane.[751] That may represent an benefit for local residents but in light of my forgoing comments, that is a consideration to which I afford limited weight.

12.207 Reference is made to improved pedestrian and cycle networks promoting sustainable travel and enhancing local connections through the site and surrounding area. There are already connections through the site - along Pump Lane and along the bridleway between Pump Lane and Bloors Lane (albeit that there would be some realignment of Pump Lane in places). However, as confirmed in the appellant's IHRA,[752] and by Mr Goodwin in oral evidence to the Inquiry, in order to avoid providing a direct link which residents could use to easily access the European designated site on foot, no enhanced pedestrian linkage between the application site and the Country Park towards the north is proposed.[753] As such, there would be no enhanced access through the site for existing residents either.

12.208 It is intended to open up a pedestrian access to the site from the southern end of Lower Twydall Lane, which would allow existing residents from that part of the settlement to access open space areas within the appeal site, and potentially to the local centre and school. It is also suggested that there would localised beneficial effects for the setting and character of Bridleway GB6a, with reference to it being incorporated into areas of Green Infrastructure including the village green, linear green space, play areas and community orchards.[754] However, it would continue on its existing alignment between two rows of substantial conifers. It would pass next to a proposed play area and through the proposed village green at its western end, but I am not persuaded that that is necessarily an improvement, given that it currently passes though orchards. It would also need to cross the estate loop road and is not shown as passing through or near any community orchards on the illustrative plans. I recognise that financial contributions towards bridleway improvements are secured. Those measures would benefit existing residents to some extent and are considerations that attract limited weight in my view, not least since were the development to proceed, the bridleway would pass for the majority of its length, through a housing development, as opposed to its current route through countryside orchards as it does at present.

[751] Dwg No 20230-05-1F
[752] *Information tor Habitats Regulations Assessment* (CD5.13)
[753] Ibid paragraph 6.34
[754] Mr Hughes proof paragraph 1.39 final bullet (page 10)

12.209 Reference is made to improved public transport links as a benefit.[6.187] The planning obligation includes a contribution towards interim assistance to support bus service provision. As set out in the TA and the HSoCGC ,[755] that relates to extending the route of existing bus service No 1, which currently terminates at The Strand, approximately 3km or so to the north-west of the appeal site along Lower Rainham Road. Whilst aimed at encouraging future occupiers of the appeal scheme to utilise public transport it would, however, also benefit existing residents living close to the proposed extended route. That is a consideration that attracts moderate weight.

12.210 Whilst the Appellant asserts that the increase in population would greatly contribute to ensuring the future viability of community facilities such as healthcare centres, post offices, and schools, there is no evidence before me to indicate that existing facilities are failing, or would fail absent the appeal scheme. As such, this is not a consideration that attracts any material weight in this instance.

12.211 The local primary schools are at or over capacity and the school proposed on the site could assist in this regard.[6.187] However, its provision is largely to mitigate the impact of the future occupiers on existing school capacity. I therefore give this limited weight. The two care facility facilities are also referred to as a benefit. There was no evidence however, to demonstrate a particular need for these in this specific location. That said, inasmuch as they may increase choice for residents, I afford their provision limited weight.

12.212 Reference is made to income for the Council from the New Homes Bonus as a benefit. Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. However, New Homes Bonus payments recognise the efforts made by authorities to bring residential development forward. I am mindful, in this regard, that the Planning Guidance makes it clear that it would not be appropriate to make a decision based on the potential for a development to raise money for a local authority.[756] Accordingly, whilst the Bonus is a material planning consideration, it is not one to which I attach positive weight.

12.213 Increased Council tax receipts are also mentioned as a benefit. However, since the development would result in a corresponding increase in demand on local services etc, again that is not a consideration to which I attach positive weight. Similarly, the financial contributions secured via the planning obligations do not amount to benefits, since they are aimed at mitigating the adverse impacts of the development scheme on local infrastructure.

12.214 It is suggested that the release of Bloors Farm and Pump Farm for the development proposed would generate additional funds that would enable the Appellant to invest meaningfully in farms that produce a materially higher fruit yield. No robust evidence was produced in this regard as to the extent of that profit; to demonstrate that such funds are necessarily required at this time for investment; or that profits from the sale of the land would necessarily be

[755] CD5.25 and CD 11.4 respectively
[756] Paragraph 011 ID:21b-011-20140612

reinvested as suggested. This not a consideration therefore, which attracts any positive weight.

Overall Planning Balance and Conclusion

Policy Framework

12.215 The Secretary of State is required to decide this appeal having regard to the development plan, and to make the determination in accordance with it, unless material considerations indicate otherwise.

12.216 In this case, the Council is unable to demonstrate a five year supply of housing land. Even on its best case of 3.03 years, the shortfall is agreed as at least significant. In light of paragraph 11d) of the Framework and associated footnote 7, the absence of a five year supply means that the policies most important for determining this appeal are out of date.

Heritage Balance

12.217 In coming to an overall view on the scheme, there are some 'internal ' balances that need undertaking. Firstly, in relation to heritage assets, paragraph 196 of the Framework requires that any harm to designated assets be weighed against the public benefits of the scheme, with paragraph 197 setting out that any harm to a non-designated asset is also to be taken into account having regard to the scale of such harm and the significance of the asset.

12.218 As a consequence of the extent and location of the development proposed, I have found that there would be harm towards the middle of the less than substantial range to the special interest and significance of the grade II listed Chapel House, and to the heritage significance of Lower Rainham Conservation Area, with harm identified to other of the designated assets to be at the lower end of the scale. Any harm to the significance of the non-designated Bloors Oasts would be very minor.

12.219 When considering a proposal involving a number of heritage assets, as here, more weight can reasonably be attached in the overall planning balance to a number of 'less than substantial' harms than would be the case if only one asset would be harmed. However, these separate harms would not then cumulatively amount to substantial harm, or a high level of less than substantial harm in the Framework context, as asserted by the Council's heritage witness.[757] Rather, each incidence of harm to the listed buildings needs to be given 'considerable importance and weight',[758] with the Framework confirming that whatever the level of harm in relation to other designated heritage assets (the Conservation Areas in this instance, the settings of which are not statutorily protected) great weight is to be given to their conservation, with any harm to the significance of non-designated assets also to be taken into account in determining the application, taking account of the scale of any harm.

[757] Ms Wedd paragraph 6.65
[758] Eg *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council* [2014] EWCA Civ 137

12.220 In this case, I consider the very substantial benefits that would arise from the appeal scheme to be sufficient to outweigh the heritage harm that I have identified both individually and collectively. In reaching this conclusion I have applied the balancing exercise so as to give great weight and importance to the conservation of the heritage assets, understanding that they are an irreplaceable resource. The outcome of this balance does not, in the terms of paragraph 11d)i) of the Framework, provide a clear reason for refusal. If the Secretary of State were to come to the opposite view, that would engage paragraph 11di).

Agricultural Land Balance

12.221 Framework paragraph 170b) requires that the economic benefits of this area of BMV land be recognised. I have found, in this regard, that the appeal site, which comprises more than 50ha of BMV land is capable of returning a reasonable profit and is therefore economically viable for continued horticultural use.

12.222 I am also mindful that, in relation to development plans, footnote 53 of the Framework states that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. That is also reflected in the Planning Practice Guidance.[759] Based on Natural England's Likelihood of BMV Land Map (2017)[760] it would appear that that part of the District with a low likelihood of comprising BMV land lies to the north of Cliff and along the north side of the Hoo peninsula, around Lodge Hill and to the west of the Isle of Grain. Those areas also coincide with large areas of land within flood zone 3 and areas identified as SSSIs.[761] Excluding those built up areas, which cannot realistically accommodate the forecast housing requirements for Medway, the rest of the District is considered to be BMV land.

12.223 The Council accepts that BMV land will be required in order to meet housing needs across Medway.[6.265, 7.91] However, none of the scenarios in the emerging Local Plan envisage development of the appeal site, or indeed any strategic level development in the same locality. I recognise that, going forward, the Council relies in no small part on large scale development on the Hoo Peninsula to meet its housing requirement and that, given the early stage of the emerging plan, that cannot be guaranteed (notwithstanding Medway's New Routes to Growth HIF Project).[762] However, it seems to me that there is at least the possibility of locating strategic development, such as that proposed here, on land that whilst comprising BMV is potentially of poorer quality/usefulness than that of the appeal site, albeit that that may be some years off if it was to be delivered as part of that emerging Plan.

12.224 In my view, the substantial benefits of the appeal scheme, including the delivery of market and affordable housing at a time of pressing need, are not sufficient in this instance, to outweigh the loss of more than 51 hectares of

[759] Reference ID: 8-026-20140306
[760] CD6.6 Appendix 1
[761] CD6.6 paragraph 2.7 and 2.8
[762] CD1.4

BMV land, including the loss of orchards, being land that I have found is capable of continued beneficial economic use. BMV land is a finite asset and, once built on, it will never be available again. All in all, I consider that the loss of this significant area of BMV land, and the orchards, would have a negative effect on the provision of such land in terms of economic and other benefits, bringing it into conflict with paragraph 170b) of the Framework.

12.225 If the Secretary of State were to come to a different view, then the loss of the BMV land would not be a matter that weighed against the appeal proposal.

Overall Balance

12.226 In the absence of a five year supply of housing land, the most important policies for determining this appeal are out date and the so-called tilted balance as set out in Framework paragraph 11d)ii) is engaged. In other words, permission should be granted unless the presumption in favour of sustainable development can be displaced. That is not to say, however, that any conflict with relevant policies should be disregarded. That will depend on their consistency, or otherwise, with the policies in the Framework. The Position Statement on Policy Matters[763] sets out the parties views on the various policies and their consistency with the Framework.

12.227 The development proposed would have a substantial adverse landscape and visual impact, with corresponding harm to the character and appearance of wide swathe of countryside between Lower Rainham Road and Twydall/ Rainham. That harm is all the more significant given the status of the site as part of a locally valued landscape as recognised by its designation as an ALLI in the Local Plan, with the development causing material harm to the character and functions of the ALLI, including its function as a green buffer. That brings the development into conflict with policies S1, BNE25, BNE34 and BNE47. There would also be conflict with paragraph 170a) and b) of the Framework.

12.228 There is no dispute that policy S1 does not reflect the Framework and that any conflict should be afforded limited weight.[6.29, 7.222]764

12.229 In dealing with development in the countryside, policy BNE25 is intrinsically linked to settlement boundaries that in turn reflect now out-of-date housing requirements. It also lacks a hierarchical approach requiring that landscape protection is commensurate with status, effectively placing a blanket restriction on most development in the countryside.[6.33, 6.40, 6.41, 7.221] However, it does include a requirement to maintain/enhance the character, amenity and functioning of the countryside, which chimes with the environmental objective in the Framework at paragraph 8c) and with the need set out at paragraph 170b) to recognise the intrinsic character and beauty of the countryside. To that extent, I afford any conflict with it some, albeit limited weight. I am

[763] CD11.6, **INSPECTOR'S NOTE**: Mr Canavan (for the Council) verbally corrected some of his entries on the table. The weight to be afforded in his view to policy BNE25 (page 2) was confirmed as limited (instead of medium); the weight in his view to be afforded to policy BNE48 (page 4) was confirmed as none (as opposed to limited); and the weight he considered should be afforded to policy S1 (page 5) was confirmed as limited (as opposed to full). In addition, the Appellant revised its position in relation to policy T1, as set out in ID46.
[764] CD11.6

supported in that view by the reasoning of a colleague in the Orchard Kennels Decision drawn to my attention.[765]

12.230 BNE34 relates to the ALLIs.[6.34, 6.36, 6.331, 7.222(3-5), 7.223] As noted by the Orchard Kennels Inspector, it is not a general restraint policy, but one that protects specific areas for their local landscape value. I agree with him that as such, it is consistent with the aims of Framework paragraph 170 in seeking to contribute to and enhance the natural and local environment, including valued landscapes. There was no dispute that it is a valued landscape for these purposes. Although as a local designation, it is at the lower end of the hierarchy, it still merits protection. In restricting development in some areas, the policy may have some effect on housing delivery, but that is an inevitable side effect of protecting valued landscapes. As with my colleague, I see nothing in this aspect of the policy that is inconsistent with the approach of the Framework in seeking to balance the need for housing with the interests of the environment. I recognise, as noted above, that the Council has granted permission for some development in this ALLI, but matters of landscape and visual impact will often vary between different sites. Whilst recognising the pressing need for housing in Medway, like my colleague, I see no reason in this case why the conflict with policy BNE34 should be given anything less than full weight, even.

12.231 Both parties are agreed that policy BNE47 is consistent with the Framework and any conflict with it can be afforded full weight.[766] I have no reason to take a different view.

12.232 There would be harm to the heritage significance of a range of heritage assets to varying degrees, none higher than towards the middle of the range that is less than substantial in the terms of the Framework, and minor/very limited harm to the significance of a non-designated asset. Those harms bring the development into conflict with Local Plan policies BNE14 and BNE18. Notwithstanding that the outcome of the internal heritage balance, a finding of less than substantial harm in relation to designated heritage assets does not equate to a less than substantial planning objection.

12.233 Both parties are agreed that BNE14 is consistent with the Framework and any conflict with it can be afforded full weight.[767]

12.234 Inasmuch as policy BNE18[6.31, 7.226] reflects the statutory duty set out at Section 66 of the Planning (Listed Buildings and Conservation Areas) Act to resist development that would adversely affect the setting of a listed building, as opposed to balancing any harm that may arise against public benefits, there is an apparent tension with the Framework. However, the underlying purpose of both the statutory duty and the Framework is to protect the special interest and heritage significance of listed buildings. It would be a nonsense not to protect them just because the policy contains no balance. On that basis, I consider that any conflict with the policy can attract at least moderate, if not virtually full weight.

[765] CD4.4 paragraph 29
[766] Position Statement on Policy Matters (CD11.6)
[767] ibid

12.235 I have found that the loss of this significant area of BMV land is not justified in this instance, bringing it into conflict with paragraph 170b) of the Framework. I attach moderate weight to this harm.[6.315, 7.93]

12.236 I have found that the appeal scheme would result in a severe cumulative impact on traffic levels at key junctions in the local area and on the free flow of traffic on the local highway network, in particular subnetwork 2. As such, I have found that the scheme conflicts with Local Plan policy T1 and paragraphs 108 and 109 of the Framework.

12.237 The relevant part of policy T1 in terms of this appeal is permissive of development proposals provided that the highway network has adequate capacity to cater for the traffic which would be generated by the development. Inasmuch as it sets what the Appellant considers to be a lower threshold at which a policy conflict may be found, with the Framework allowing for adverse impacts on capacity, with refusal on highways grounds only where the residual cumulative impact is severe. I agree with the Appellant therefore that the policy is not in conformity with the Framework.[6.332, 7.138]768 Nonetheless, inasmuch as it does require an assessment of impact on capacity, I consider that any conflict with the policy should attract at least modest weight.

12.238 The benefits of the appeal scheme are substantial and wide ranging. I am particularly mindful of the market and affordable housing that would be provided at this time of undoubtedly pressing need. However, when assessed and considered those benefits do not, even collectively, overcome the cumulative substantial weight I attach to the harms I have identified. In my view, the adverse impacts in this case significantly and demonstrably outweigh the benefits when assessed against the Framework taken a whole.

12.239 Even had I concluded that the mitigated highway impacts were acceptable and that there really was no viable agricultural/horticultural use to which this particular area of BMV could be put, I consider the landscape harm to be so substantial that, and even without the heritage harm, the adverse impacts would still significantly and demonstrably outweigh the benefits when assessed against the Framework taken a whole.

13. RECOMMENDATION

13.1 For the reasons set out above, I recommend, on balance, that the appeal should be dismissed.

13.2 In the event that the Secretary of State comes to a different view and allows the appeal, Annex D sets out the conditions that I recommend should be attached to any grant of planning permission, with Annex E containing information that the Secretary of State will need to consider when carrying out an Appropriate Assessment under the Habitats Regulations.

Jennifer A Vyse
INSPECTOR

768 ID46

ANNEX A
APPEARANCES

FOR THE APPELLANT:

Juan Lopez, of Counsel
He called:

Robert Hughes BSc(Hons) PgDipLA, CMLI	Technical Director at Tyler Grange Group Limited
John Pelham MA(Oxon)	Partner at Andersons Midlands
Timothy Goodwin BSc(Hons), MSc, MIEnvSc, MCIEEM, MIALE	Director of Ecology Solutions
Gail Stoten BA(Hons), MCIfA, FSA	Executive Director at Pegasus Planning Group
Simon Tucker BSc(Hons), MCIHT	Director of DTA Transport Limited
Duncan Parr BA, DUPI, DipTP, FRGS, MRTPI, Cgeog, MEWI	Planning Partner at Rapleys LLP

Mesdames Flintoft and Nutley assisted the Council in the discussion on conditions and the planning obligations.

FOR THE LOCAL PLANNING AUTHORITY:

Robert Williams, of Counsel
He called:

Jon Etchells MA, BPhil, CMLI	Director of Jon Etchells Consulting Limited
Richard Lloyd Hughes BSc(Hons) MRICS, CGFBM	Director of Rural Planning Limited
Kit Wedd BA(Hons), IHBC	Director of Spurstone Heritage Limited
Karl Jarvis BA(Hons), MA, MCIHT	Technical Director in Transport Modelling at Sweco UK Limited
James Rand BA(Hons), MA	Principal Transport Planner at Paul Basham Associates
Peter Canavan BA(Hons), MSc, MRTPI	Associate Partner at Carter Jonas LLP

Ms Lockwood assisted the Appellant in the discussion on conditions and the planning obligations.

INTERESTED PARTIES:

Rehman Chisti MP	Member of Parliament for Gillingham and Rainham
Cllr Martin Potter	Ward member
Ila Hewitt	Local resident and member of the Pump Lane Steering Group
Paul Clarke	Local resident and member of the Pump Lane Steering Group
Kaye Belmonte	Local resident and member of the Pump Lane Steering Group

ANNEX B
DOCUMENTS HANDED UP TO THE INQUIRY

ID1	Council's opening statement
ID2	Appellant's opening statement
ID3	Aerial photo sequence of appeal site 2003-2020 (also at CD12.9)
ID4	Hedgerow removal and replacement at site access points
ID5	Pump Farm orchard blocks
ID6	Appellant's Note on UK Farm incomes - long term (Defra/Andersons) (15 February 2021)
ID7	Councillor Potter – speaking notes
ID8	Pump Lane Steering Group – speaking notes
ID9	Rehman Chisti MP – speaking notes
ID10	Appellant's Note on position reached with Highways England (17 February 2021)
ID11	Pump Lane Steering Group - update on public right of way application
ID12	Footpath link to Lower Twydall Lane (Plan No 11047 FPL.01 Rev A)
ID13	Appellant's ecology note on hedgerows (22 February 2021)
ID14a	CIL Compliance Statement v1
ID14b	CIL Compliance Statement v2
ID15	Suggested conditions
ID16	Council Note on annualised interest rates (re BMV) (19 February 2021)
ID17	Local Plan Proposals Map extract and key
ID18	Location of appeal sites referred to within the District
ID19	*Peel Investments (North) Ltd v SSHLG and Salford CC* [2020] EWCA Civ 1175
ID20	Appellant's update on access plans/hedgerow removal and Movement Parameter Plan (22 February 2021)
ID21	Appeal Decision – Land at Perrybrook (APP/G1630/V/14/2229497)
ID22a	Draft Planning Obligation v1 (superseded by v2)
ID22b	Draft Planning Obligation v2 (superseded by ID55)
ID23	Appeal Decision – Land off Silver Street (APP/Y1138/W/17/3172380)
ID24	Written representations from Mr and Mrs Fisher
ID25	Appellant's response to Inspector's questions on ecology, biodiversity and air quality (26 February 2021)
ID26	Appellant's response to Inspector's questions on community orchards (26 February 2021)
ID27	Cllr Potter's suggestions re site visit itinerary
ID28	HM Treasury Budget 2021 (Executive Summary and Budget Report) submitted by the Appellant (22 March 2021)
ID29	Building Heights Parameters Plan (amended) – Appellant's note (3 March 2021)
ID30	Building Heights Parameters Plan – Council's note and addendum (March 2021)
ID31	Additional Appeal Decisions/Judgements relied on by the Appellant 1. *Suffolk Coastal DC v Hopkins Homes Ltd and Richborough Estates Partnership LLP & Cheshire East v SSCLG* [2016] EWCA Civ 168 2. *Cheshire East BC v SSCLG* [2016] EWHC 571 (Admin) 3. *Wainhomes (South West) Holdings Ltd v SSCLG* [2013] EWHC 597 (Admin) 4. APP/A0665/W/19/3220360: Land at The Hollies, School Lane, Hartford, Northwich

5. APP/A0665/A/12/2179410 & APP/A0665/A/12/2179374: Land at Grange Farm, Hartford, Cheshire and Land to the East of School Lane, Hartford
6. APP/P2935/A/14/2212989: Land South of A196, Stobhill, Morpeth, Northumberland
7. APP/C3105/W/19/3229631: Land North of Shortlands and south of High Rock, Hook Norton Road, Sibford Ferris, Oxon

ID32 Medway Housing Delivery Table 1998/99 – 2019/20
ID33 Historic England comments on revised building parameters plan (29 March 2021)
ID34 SWECO Transport Impact Appraisal Addendum 3 (Additional A2 Mitigation Results) March 2021
ID34a Transport Impact Appraisal – corrected tables
ID35 Mr Rand Addendum proof of evidence
ID36 Mr Tucker Second Rebuttal Proof
ID37 Appellant's Note on planning application No MC/19/0765: East Hill, Chatham (15 April 2021)
ID38 Appellant's Note on Building Heights (15 April 2021)
ID39 Appellant's A2 Junction Operation Review (23 February 2021)
ID40 Pump Lane, Lower Rainham Road Safety Audit Stage 1 8 April 2021 (Mott Macdonald)
ID41 Council's response to ID37 (16 April 2021)
ID42 Addendum Highways Statement of Common Ground
ID43 Macroscopic flow comparisons
ID44 Volume/Capacity ratio comparisons
ID45 Medway Affordable Housing Delivery Table
ID46 Appellant's Note on Transport Policy T1 and Framework paragraphs 108-111 (23 April 2021) [769]
ID47 Council's application for costs
ID48 Mr Lloyd Hughes Addendum Note re DEFRA figures in his Appendix RH07 (23 April 2021)
ID49 Appellant's costs rebuttal
ID50 Council's Closing Submissions
ID51 Appellant's Closing Submissions
ID52 Mr Jarvis Addendum proof
ID53 Medway Council costs response
ID54 Mr Jarvis Note on Moor Park Close traffic figures (27 April 2021)
ID55 Engrossed Planning Obligation

[769] **INSPECTOR'S NOTE**: This was accepted into the Inquiry but with a caveat expressed by Mr Williams for the Council to the effect that paragraph 12 of the Note does not reflect accurately the Council's position. The Council's closing submissions confirm its position in this regard, namely that its concerns relate to all three sub-networks, not solely sub-network 2 as asserted.

ANNEX C
CORE DOCUMENTS

CD1: Local Planning Policy and Guidance	
CD1.1	Medway Local Plan 2003 - saved policies
CD1.2	Future Medway : Development Strategy Consultation (Mar 2018)
CD1.3	Hoo Peninsula consultation presentation (Mar 2020)
CD1.4	Hoo: New Routes to Good Growth (Jan 2021)
CD2: National Planning Policy and Guidance	
CD2.1	National Planning Policy Framework
CD2.2	Planning Practice Guidance
CD3: Other Relevant Policy, Guidance and Evidence Base Documents	
CD3.1	Medway Guide to Developer Contributions and Obligations (2018)
CD3.2	Strategic Access Management and Mitigation Medway Council Interim Policy Statement (2015)
CD3.3	Medway Housing Design Standards (Interim) (2011)
CD3.4	Medway Landscape Character Assessment (2011)
CD3.5	Kent County Council - Kent Design Guide (2010)
CD3.6	Kent County Council Local Transport Plan 4: Delivering Growth without Gridlock 2016-2031
CD3.7	Housing Delivery Test Action Plan (August 2020)
CD3.8	Medway Authority Monitoring Report 2020
CD3.9	Medway Strategic Land Availability Assessment (2019)
CD3.10	Housing Delivery Test Results 2020
CD3.11	Historic England: Conservation Principles - Policies and Guidance (2008)
CD3.12	Historic England: Managing Significance in Decision-Taking in the Historic Environment (GPA2) (2015)
CD3.13	Historic England: Listed Buildings and Curtilage (Advice Note 10) (2018)
CD3.14	Historic England: Statements of Heritage Significance: analysing significance in heritage assets (Advice Note 12) (2019)
CD3.15	Guidelines for Landscape and Visual Impact Assessment Third Edition (2013)
CD3.16	Historic England – Proposals for Development Management – consultation requirements (2019)
CD3.17	Historic England: The Setting of Heritage Assets (GPA3) (2017)
CD3.18	Natural England: An Approach to Landscape Character Assessment (2014)
CD3.19	Medway Transport Assessments – Guidance Note (2018)
CD3.20	Start to Finish – what factors affect the build out rates of large scale housing sites? (2nd Edition 2020) (Lichfields)
CD4: Appeal Decisions/Judgement	
CD4.1	Land at Gibraltar Farm, Hempstead, Gillingham APP/A2280/W/16/3143600
CD4.2	Land at Station Road, Rainham APP/A2280/W/15/3002877
CD4.3	Land north of Brompton Farm Road, Strood, Rochester APP/A2280/W/18/3214163
CD4.4	Land at Orchard Kennels, Meresborough Road, Rainham

	APP/A2280/W/19/3240339
CD4.5	Land off Station Road, Long Melford, Suffolk APP/D3505/W/18/3214377
CD4.6	*Catesby Estates Ltd vs Steer et al.* [2018] EWCA Civ 1697
CD4.7	Land at Hartnell's Farm, Monkton Heathfield, Taunton, Somerset APP/D3315/W/16/3157862
CD4.8	Land at Kidnappers Lane, Leckhampton, Cheltenham APP/B1605/W/14/3001717
CD4.9	Land off Town Road, Cliffe Woods, Kent APP/A2280/W/17/3175461
CD4.10	*Gladman Developments Ltd v Daventry District Council & Anor* [2016] EWCA Civ 1146
CD4.11	*Oxton Farm v Harrogate Borough Council v D Noble Limited* [2020] EWCA Civ 805
CD4.12	*SSCLG v Hopkins Homes Ltd* [2016] EWCA Civ 168
CD4.13	*Redhill Aerodrome Ltd v SSCLG* [2014] EWCA Civ 1386
CD4.14	Land at Pinn Court Farm, Pinn Hill, Exeter APP/U1105/A/13/2208393
CD4.15	*Gladman Developments Ltd v SSHCLG, Corby BC and Uttlesford DC* [2021] EWCA Civ 104
CD4.16	*Monkhill Ltd v SSHCLG & Waverley BC* [2021] EWCA Civ 74
CD5: Application Documents and Plans	
CD5.1	Application form and Certificates
CD5.2	Site Location Plan PL 010 Rev B
CD5.3	Building Heights Parameter Plan PL 004 Rev A (superseded by Rev B appended to ID29)
CD5.4	Green and Blue Infrastructure Parameter Plan PL 005 Rev A (superseded by Rev B at Appendix 6 to the Appellant's Statement of Case (CD8.1))
CD5.5	Land Use Parameter Plan PL 006 Rev A (superseded by Rev B at Appendix 6 to the Appellant's Statement of Case (CD8.1))
CD5.6	Movement Parameter Plan PL 007 Rev A (superseded by Rev D appended to ID20)
CD5.7	Indicative Recreation Plan PL 008 Rev A
CD5.8	Masterplan PL 009 Rev B (superseded by Rev C at Appendix 5 to the Appellant's Statement of Case (CD8.1))
CD5.9	Indicative Phasing Plan PL 011 Rev A
CD5.10	Design and Access Statement (Feb 2019)
CD5.11	Planning Statement (Jun 2019)
CD5.12	Housing Report (May 2019)
CD5.13	Information for Habitat Regulations Assessment (May 2019)
CD5.14	Statement of Community Involvement (Feb 2019)
CD5.15	Utilities Assessment (Mar 2019)
CD5.16	Noise and Vibration Impact Assessment (Oct 2018)
CD5.17	Flood Risk Assessment and Drainage Strategy (Jan 2019)
CD5.18	Lower Rainham ES Main Text Chapters (31 May 2019)
CD5.19	Lower Rainham ES Non-Technical Summary (28 May 2019)

CD5.20	1.1 Screening Opinion and Response (Aug 2018)
CD5.21	1.2 Scoping Report Rainham (Aug 2018)
CD5.22	1.3 Statement of Competence (May 2019)
CD5.23	8.1 Flood Risk Assessment and Drainage Strategy (Jan 2019)
CD5.24	9.1 Phase 1 Ground Condition Assessment (Oct 2018)
CD5.25	10.1 Transport Assessment (Mar 2019)
CD5.26	10.2 Framework Travel Plan (Mar 2019)
CD5.27	11.1 Landscape and Visual Impact Assessment (May 2019)
CD5.28	12.1 Air Quality Impact Assessment Approach (May 2019)
CD5.29	12.2 Traffic Data for Air Quality (May 2019)
CD5.30	12.3 Future Year Emissions Calculations (May 2019)
CD5.31	12.4 Model Verification (May 2019)
CD5.32	12.5 DEFRA Background Concentrations (May 2019)
CD5.33	12.6 Wind Rose (May 2019)
CD5.34	12.7 Predicted Pollutant Concentrations (May 2019)
CD5.35	13.1 Agricultural Land Classification and Soil Resources (Dec 2018)
CD5.36	13.2 The Farm Business Horticulture and Agricultural Issues and Constraints (Mar 2019)
CD5.37	14.1 Archaeological Desk Based Assessment (Jan 2019)
CD5.38	14.2 Pleistocene and Palaeolithic Desk Based Assessment (Nov 2018)
CD5.39	14.3 Heritage Setting Assessment (May 2019)
CD5.40	15.1 Preliminary Ecological Appraisal (May 2019)
CD5.41	15.2 Bat Activity Survey (May 2019)
CD5.42	15.3 Badger Survey (May 2019)
CD5.43	15.4 Breeding Bird Survey (May 2019)
CD5.44	15.5 Reptile Survey (2018)
CD5.45	15.6 Great Crested Newts eDNA Testing Report (Jul 2018)
CD6: Additional Information Submitted after Validation	
CD6.1	Appellant's Response to Highways England consultation (20230-05)
CD6.2	DTA - Transport Technical Note 1 (20230-08)
CD6.3	KM Heritage - Review Note (Appendix 1 – Rapleys ES Technical Appendix 14.3) (Sep 2019)
CD6.4	Appellant's response to Medway's Air Quality comments (by Stuart Steed)
CD6.5	Rapleys - response on Planning Policy (Oct 2019)
CD6.6	Lambert & Foster - Response on Best Most Versatile land (including appendices) (Oct 2019)
CD6.7	DTA - Transport Technical Note 2 (20230-09)
CD6.8	Stantec - Surface Water Drainage Strategy Addendum (44538/TN001) (Jan 2020)
CD6.9	Ecology Solutions - IHRA Update with regards to Hydrological Matters
CD6.10	KM Heritage - Addendum Heritage Note (Feb 2020)
CD6.11	Rapleys – Supplementary Environmental Statement (including surface water and drainage addendum (App 8.1sup); Transport Technical Note 3 (App 10.1sup); Framework Travel Plan (App10.2a); response on air quality (App 12.1sup); Loss of Agricultural Land rebuttal (App 13.2sup)) (Mar 2020)
CD6.12	DTA – Second response to Highways England (Apr 2020)
CD6.13	Appellant's Housing Supply Note Update (March 2020)

CD7: Other Documents (*does not include consultation responses*)	
CD7.1	Decision Notice
CD7.2	Officers Report
CD7.3	Members presentation meeting note (Jul 2019)
CD7.4	Planning and highways meeting with Officers - meeting note (Sep 2019)
CD7.5	Planning and highways meeting with Officers - meeting note (Oct 2019)
CD7.6	Planning and highways meeting with Officers - meeting note (Jan 2020)
CD7.7	Agricultural Land Classification of England and Wales (Oct 1988)
CD7.8	Natural England - Technical Information Note 49 : protecting the best and most versatile agricultural land (Jan 2009)
CD7.9	DEFRA Statistics on UK apple production volumes and value (Jul 2020)
CD7.10	'Parishes: Rainham', in *The History and Topographical Survey of the County of Kent: Volume 6*. Canterbury 1798 (British History Online)
CD7.11	Not used
CD7.12	The Landscape Assessment of Kent (Jacobs Babtie for Kent County Council (Oct 2004)
CD7.13	Lower Rainham Conservation Area (Information leaflet produced by Gillingham Borough Council) (Oct 1994)
CD8: Documents Submitted as Part of the Appeal	
CD8.1	Appellant Appeal Statement of Case: Appendix 1 Transport Addendum- David Tucker Associates Appendix 2 Farming Viability Report – E J Pelham Appendix 3 Correspondence with Natural England Appendix 4 Consolidated update Environmental Statement (Sep 2020) Appendix 5 Revised site Master Plan Appendix 6 Parameter Plans – Building Heights, Land Use, Movement and Green & Blue Infrastructure Appendix 7 Indicative Recreation Plan Appendix 8 Planning for Growth on the Hoo Peninsula Representation – Rapleys LLP Appendix 9 Relevant Appeal Decisions Appendix 10 Planning Policy Officer's response (15/07/2019)
CD8.2	Draft General Matters Statement of Common Ground
CD8.3	Consolidated Environmental Statement (including updated drawings, Transport Addendum, LVIA, Farm Business Financial Viability assessment and Heritage Setting Assessment) (Sep 2020)
CD8.4	Supplementary Environmental Statement (including Transport Addendum, LVIA, Farm Business Financial Viability assessment and Heritage Setting Assessment) (Sep 2020)
CD8.5	Supplementary Environment Statement: Non-Technical Summary (Sep 2020)
CD9: Council Appeal Documents	
CD9.1	Council's Statement of Case
CD10: Proofs of Evidence	
CD10.1	Duncan Parr (Proof + Appendices)
CD10.2	Gail Stoten (Proof + Appendices + Summary)
CD10.3	Robert Hughes (Proof (Vol 1) + Plans and Photoviewpoints (Vol 2) + Summary)

CD10.4	Simon Tucker (Proof + Appendices + Summary)
CD10.5	John Pelham (Proof)
CD10.6	Peter Canavan (Proof)
CD10.7	Kit Wedd (Proof)
CD10.8	Jon Etchells (Proof)
CD10.9	James Rand (Proof + Appendices)
CD10.10	Karl Jarvis (Proof + Appendices)
CD10.11	Richard Lloyd-Hughes (Proof + Appendices)
CD10.12	Duncan Parr (Rebuttal)
CD10.13	Simon Tucker (Rebuttal)
CD10.14	John Pelham (Rebuttal)
CD10.15	Gail Stoten (Rebuttal)
CD10.16	Karl Jarvis (Rebuttal)
CD10.17	Richard Lloyd-Hughes (Rebuttal)
CD11: Statements of Common Ground	
CD11.1	General Matters SoCG
CD11.2	Heritage SoCG
CD11.3	Landscape SoCG
CD11.4	Transport SoCG
CD11.5	Agricultural Land SoCG
CD11.6	Position Statement on Policy Matters (as amended orally at the Inquiry and by ID46)
CD12: Other Appeal Documents	
CD12.1	Pump Lane and Lower Rainham Transport Impact Appraisal (Oct 2020)
CD12.2	Pump Lane and Lower Rainham Transport Impact Appraisal Addendum 2 (2028 results) (Jan 2021)
CD12.3	Pump Lane and Lower Rainham Transport Impact Appraisal Addendum" (2037 results) (Dec 2020)
CD12.4	Medway Aimsun Model Validation Report (Sep 2017)
CD12.5	Council email responses to queries from Appellant
CD12.6	DTA Transport Technical Note 4 (Jan 2021)
CD12.7	CIHT Planning for Walking (Apr 2015)
CD12.8	DfT TAG UNIT M3.1 Highway Assignment Modelling (May 2020)
CD12.9	Aerial Google Photos (repeat of ID3)
CD12.10	Lower Rainham Site Sensitivity Test 1 (PowerPoint presentation)
CD13: Representations	
CD13.1	Historic England (Aug 2019)
CD13.2	Historic England (Oct 2019)
CD13.3	Conservation Officer emails (Jul and Oct 2019)

ANNEX D
Schedule of recommended conditions should the appeal succeed

Reserved Matters

1) Details of the appearance, landscaping, layout and scale for each phase of the site (hereinafter called 'the Reserved Matters') shall be submitted to and approved in writing by the local planning authority before any development on that phase begins. Development shall be carried out as approved.

2) Application for approval of the Reserved Matters relating to the first phase of the development hereby permitted shall be made to the local planning authority not later than eighteen calendar months from the date of this permission.

3) Application for approval of the Reserved Matters on all the remaining phases of the development hereby permitted shall be made to the local planning authority not later than five years from the date of this permission.

4) The development hereby permitted shall begin no later than 12 months from the date of approval of the last of the Reserved Matters relating to the first phase to be approved. Development on any subsequent phase must commence within 12 months of approval of the last of the Reserved Matters relating to that phase.

Plans

5) Development shall be undertaken in accordance with the following approved plans:

Site Location Plan	PL 010 Rev B
Building Heights Parameter Plan	PL 011 Rev B
Land Use Parameter Plan	PL 006 Rev B
Movement Parameter Plan	PL 007 Rev D
Green and Blue Infrastructure Parameter Plan	PL 005 Rev B
DTA Drawing Proposed Right Turn Lane Lower Rainham Road	20230-05-2 Rev F
DTA Drawing Proposed Overall Access Strategy and Key Network	20230-05 Rev F
DTA Drawing Proposed Northern Pump Lane crossing arrangement	20230-05-6 Rev F
DTA Drawing Proposed Southern Local Access / Spine Road Junction	20230-05- 5 Rev F

Floorspace Parameters

6) No single retail unit within the local centre hereby permitted falling within Class E of the Town and Country Planning (Use Classes) Order 1987 (as

amended) (or any Order revoking or re-enacting that Order) shall have a floorspace greater than 450sqm (gross internal area).

PRE-RESERVED MATTERS

Phasing

7) Prior to the submission of any Reserved Matters application, a Phasing Plan for development of the entire site shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. Among other things, the Phasing Plan shall demonstrate how development of the entire site would be brought forward to secure the following:

- maximum 1,250 homes;
- two form entry primary/nursery school;
- 60 bed extra care facility;
- 80 bed care home;
- village green (minimum 2.78 acres);
- 5% of the dwellings to be for custom and self-build;
- how the site would be developed by a number of developers, including provision for SMEs;
- a local centre, including community facilities, retail and business uses; and,
- a spine road, cycle ways and footpaths.

Design Code

8) Prior to the submission of any Reserved Matters application, an Overarching Design Code for development of the entire site shall be submitted to and approved in writing by the local planning authority. The Overarching Design Code shall include consideration of character areas, parameter matters, principles of sustainable urban drainage, strategic landscaping, dwelling mix, matters of sustainability including measures to support and encourage safe pedestrian and cycle movement within and out from the site, aspirations towards energy efficiency, and measures to combat climate change. The Reserved Matters applications relative to each phase of the development shall demonstrate how the approved Overarching Design Code has been adhered to, or provide a coherent and justified argument relative to why there is any departure. Development shall be carried out in accordance with the approved details.

Archaeological Field Evaluation

9) Prior to the submission of any Reserved Matters application, an Archaeological Field Evaluation Report identifying any remains that may be present on the site and assessing their character, extent, date, condition and significance, together with recommendations in relation to any necessary safeguarding measures, shall be submitted to and approved in writing by the local planning authority. The archaeological evaluation works shall include specialist evaluation of the site's Pleistocene and Palaeolithic interest. The archaeological field evaluation works shall have been carried out in accordance with a written specification and timetable

which shall previously have been submitted to and approved in writing by the local planning authority.

PRE-COMMENCEMENT/RESERVED MATTERS STAGE
Construction

10) No development shall commence on any phase (including works of site clearance, ground preparation and/or any remediation works, but excluding the erection of tree protection fencing and site hoardings) until a Construction Environmental Management Plan (CEMP) for that phase has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved CEMP. The CEMP shall include, but is not limited to, the following matters:
    i) the hours during which construction work, including works of site clearance, and deliveries to/from the site can take place;
    ii) site management arrangements, including on-site storage of materials, plant and machinery; temporary offices, contractors compounds and other facilities; on-site parking and turning provision for site operatives, visitors and construction vehicles; and provision for the loading/unloading of plant and materials within the site;
    iii) details of measures to prevent the deposit of mud and debris on the public highway by wheeled or tracked vehicles;
    iv) measures, including noise control devices, to mitigate the impact of noise at nearby residential premises;
    v) measures to minimise the emission of dust from the site during the construction period;
    vi) arrangements for any temporary site lighting, including security lighting, its location and hours of operation;
    vii) a construction waste management plan that identifies the main waste materials expected to be generated by the development during demolition and construction, including vegetation, together with measures for dealing with such materials so as to minimise waste and to maximise re-use and recycling;
    viii) pollution incident control measures;
    ix) a nominated developer/resident liaison representative with an address and contact telephone number to act as first point of contact for residents who have any problems or questions related to the ongoing development for the construction period; and,
    x) a Construction Surface Water Management Plan (CSWMP) detailing how storm and surface water is to be managed on site during the construction period (including works of site clearance, preparation and remediation works). The CSWMP shall include method statements, scaled dimensioned plans and drawings detailing the surface water management proposals, including temporary drainage systems, measures for managing pollution/water quality and protecting controlled waters and watercourses, and measures for managing any associated on or offsite flood risk.

Ecology/Environmental

11) Development shall not commence unless and until a Site Wide Strategic

Ecology Plan has been submitted to and approved in writing by the local planning authority. The Reserved Matters submitted pursuant to each phase shall include an ecological mitigation, enhancement and management plan for that phases which accords with the Site Wide Strategic Ecology Plan as approved, together with details of when and how the ecological measures are to be secured. Development shall be carried out in accordance with the approved details.

12) Prior to the commencement of development in each phase, details of how that particular phase will enhance biodiversity (demonstrating a minimum of 20% net biodiversity gain) shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

13) No development shall commence, including any works of site clearance and preparation, unless and until an Arboricultural Method Statement (AMS) and Tree Protection Plan (TPP), which shall include details of all trees and hedgerows to be retained and removed, any facilitation pruning required and the proposed measures of protection undertaken in accordance with BS 5837 (2012) 'Trees in Relation to Design, Demolition and Construction-Recommendations,' has been submitted to and approved in writing by the local planning authority. The AMS shall include full details of all areas of hard surfacing within the root protection areas of the retained trees and hedges, which should be of permeable, no-dig construction, and full details of foundation design where the AMS identifies that specialist foundations are required. The approved barriers and/or ground protection measures shall be erected before any equipment, machinery or materials are brought onto the site and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the areas protected in accordance with this condition. The siting of barriers/ground protection shall not be altered, nor ground levels changed, nor excavations made within these areas without the prior written consent of the local planning authority. The measures set out in the AMS and TPP shall be adhered to in accordance with the approved details.

14) The Reserved Matters details submitted pursuant to condition 1 with respect to each phase shall include details of measures to address climate change and energy efficiency that build on the objectives set out in the Overarching Design Code approved pursuant to condition 8. The measures shall include, but are not confined to, meeting the objectives of the Future Homes Standard (2019) and measures to utilise brown water. Development shall be carried out in accordance with the approved details. Prior to occupation of 90% of the dwellings in any phase, a verification report demonstrating how the measures have been secured shall be submitted to and approved in writing by the local planning authority. The approved measures shall thereafter be retained.

Soil Resource Management Plan

15) No development shall take place on the site, including works of site clearance and ground preparation, unless and until a Soil Resource Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall confirm the different soil types (based on the soil survey work already undertaken) and the most

appropriate re-use for the different types of soils. It shall also include a scheme, including a timetable for implementation, setting out the proposed methods for the treatment, handling, storing and replacing soils on-site pursuant to the recommendations set out in the Environmental Statement (dated 31 May 2019: Ref: SRS/18-01307 - particular paragraphs 13.61-13.64). Development shall be carried out in accordance with the approved scheme.

Contamination

16) The details submitted pursuant to the first Reserved Matters application for each phase must include an investigation and risk assessment, which must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, including risks to groundwater, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons in accordance with DEFRA and the Environment Agency's *'Model Procedures for the Management of Land Contamination, CLR 11*' and a written report of the findings must be produced. The report of the findings must include:

(i) a survey of the extent, scale and nature of any contamination.

(ii) an assessment of the potential risks to:

- human health
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes.
- ground waters and surface waters
- ecological systems,
- archaeological sites and ancient monuments.

(iii) an appraisal of remedial options, and identification of the preferred option(s).

17) Where, following the investigation and risk assessment pursuant to condition 16, land affected by contamination is found in any phase which poses risks identified as unacceptable, no development within that phase (including any works of site clearance and preparation but with the exception of tree protection fencing and hoarding) shall take place until a detailed remediation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken, including a verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation scheme are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. The remediation scheme shall be sufficiently detailed and thorough to ensure that, upon completion, the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use after remediation.

18) Any remediation scheme for any phase approved pursuant to condition 17, must be carried out in accordance with its terms prior to the

commencement of any development within that phase (other than development required to enable the remediation process to be implemented, together with the erection of tree protection fencing and the erection of hoarding). The local planning authority must be given not less than two weeks written notification prior to the commencement of the remediation scheme works. Following completion of the measures identified in the approved remediation scheme, a verification report by a suitably qualified contaminated land practitioner, based on the verification plan submitted pursuant to condition 17, that demonstrates the effectiveness of the remediation carried out, must be submitted to and approved in writing by the local planning authority before first occupation of the relevant phase of development.

Noise/Vibration

19) With regard to any residential accommodation in any phase, including the extra care and care home accommodation, the Reserved Matters details submitted pursuant to condition 1 for that phase shall include a scheme of acoustic protection. The scheme shall accord with BS8233:2014 Guidance on Sound Insulation and Noise Reduction for Buildings to ensure that internal noise levels from transport sources (LAeq,T) are no greater (with windows closed) than 30dB in bedrooms and 35dB in living rooms, and that maximum noise levels (LAFmax) are no greater than 45dB(A) with windows closed. Where the internal noise levels would be exceeded with windows open, the scheme shall incorporate appropriate acoustically screened mechanical ventilation. The scheme shall also include details of acoustic protection sufficient to ensure amenity/garden noise levels of not more than 55dB (LAeq,T). All works to any relevant residential accommodation which forms part of the approved scheme, shall be completed before it is occupied and shall thereafter be maintained in accordance with the approved details.

20) Prior to commencement of the development on the nursery/primary school hereby permitted, a scheme of acoustic protection for occupiers of the building in relation to noise from transport sources shall be submitted to and approved in writing by the local planning authority. The scheme shall be designed in accordance with Building Bulletin 93 Acoustic Design Of Schools: Performance Standards. All works which form part of the approved scheme shall be completed before any part of the building is brought into use and the development shall thereafter be maintained in accordance with the approved details.

21) The details submitted pursuant to each Reserved Matters application for any phase shall include a scheme to protect development within that phase from vibration arising from the adjacent railway line. All works, which form part of the approved scheme, shall be completed before any part of the development within that phase is occupied and shall thereafter be maintained in accordance with the approved details.

Archaeology

22) The details submitted pursuant to the Reserved Matters submissions for each phase, including siting and layout, shall demonstrate how the development has been informed by any safeguarding measures identified in the Archaeological Field Evaluation Report submitted pursuant to condition

9. The details to be submitted shall have regard to any areas identified as needing to be excluded from development and shall include details of foundation designs and any other proposals involving below ground excavation. Development shall be carried out in accordance with the approved plans.

23) No development shall take place, including any site clearance or remediation works, unless and until a written scheme of archaeological investigation has been submitted to and approved in writing by the local planning authority. The scheme shall provide details of the programme of archaeological works to be carried out within the site, as well as post-excavation assessment (including analysis of the site investigation records and findings and production of a final report on the significance of the archaeological, historical and architectural interest represented) and appropriate publication. The archaeological site work shall thereafter be implemented in full in accordance with the approved scheme.

Open Space/Landscaping

24) Prior to the commencement of any development, details of the village green (min 2.78 acres); the siting and provision of either nationally equipped areas of play or locally equipped areas of play; community orchard; dog walking (on and off lead) areas; and sports provision, shall be submitted to and approved in writing by the local planning authority. Details of the precise layout and equipment to be included in the village green, play spaces, dog walking areas and sports provision shall be included within the Reserved Matters applications for the phases within which they would be located and shall be provided in accordance with the approved details prior to 50% occupation within the phase within which they are to be provided as approved in condition 7.

25) The landscaping details submitted pursuant to condition 1 shall include strategic landscaping for the entire site which shall accord with the Overarching Design Code approved pursuant to condition 8.

Surface Water Drainage – scheme required

26) No development shall take place, including works of site clearance and ground preparation, until details of surface water drainage works based on sustainable drainage principles, including details of the design, implementation, maintenance and management of the drainage scheme, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The details to be submitted shall, where applicable:

i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

ii) include a timetable and construction method statement for its implementation (including phased implementation where applicable);

iii) provide appropriate operational, maintenance and access requirements for each sustainable drainage component; and,

iv) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any

public body or statutory undertaker or management company and any other arrangements to secure the operation of the scheme throughout its lifetime.

Highway Works

27) No development shall take place until full details (including timing of delivery) of the on-site access works set out below have been submitted to and approved in writing by the local planning authority:

i) Southern Local Access/spine road junction (Dwg 20230-05-5 F); and,

ii) Northern Local access/spine road junction (Dwg20230-05-6 F).

The works shall be carried out in accordance with the approved details and delivery programme.

28) No development shall take place until full details (including timing of delivery) of the off-site highway improvement works set out below have been submitted to and approved in writing by the local planning authority:

i) Lower Rainham Road: Proposed right turn lane (Dwg 20230-05-2 F);

ii) Pump Lane Railway bridge improvements (Dwg 20230-05-1 F).

iii)Yokosuka Way Roundabout (20230-10 Rev B) with appropriate destination markings to allow for two lanes of right-turning traffic from the eastern arm;

iv) Bloors Lane Junction (20230-09 Rev A);

v) Will Adams Roundabout (20230-18B) with appropriate destination markings to allow for two lanes of right-turning traffic from the eastern arm;

vi) pedestrian crossing improvement east of Bowaters roundabout (20230-17B); and,

vii) signal phasing at the Otterham Quay Lane/A2 junction and Bowaters roundabout.

The works shall be completed in accordance with the approved details and delivery programme.

29) The Reserved Matters details for each phase shall include details of the proposed footpath and cycle way provision and footways through the site to accord with the objectives of the Overarching Design Code and phasing plans approved pursuant to conditions 8 and 7, along with details of the timing for their provision and future maintenance. Development shall be carried out in accordance with the approved details.

Telecommunications

30) No development within any phase (with the exception of works of demolition and site clearance) shall take place until details of the installation of fixed telecommunication infrastructure and high speed broadband on that land have been submitted to and approved in writing by the local planning authority. No building in any phase shall be occupied or brought into use before the telecommunication infrastructure and broadband to serve that building have been installed in accordance with the approved details.

EARLY STAGE AND PRE-OCCUPATION CONDITIONS

Care/Education Provision

31) No more than 800 residential units shall be occupied until the extra care centre hereby permitted has been constructed in accordance with details that have previously been submitted to and approved in writing by the local planning authority and is available for occupation.

32) No more than 800 residential units shall be occupied until the care centre hereby permitted has been constructed in accordance with details that have previously been submitted to and approved in writing by the local planning authority and is available for occupation.

33) No more than 400 residential units shall be occupied until the 1FE nursery and primary school with a 2FE core and associated grounds covering no less than 6.43 acres, has been constructed in accordance with details that have previously been submitted to and approved in writing by the local planning authority and be ready and available for occupation. The remaining 2FE element of the nursery and primary school shall be provided on site in accordance with details previously submitted to and approved in writing by the local planning authority prior to occupation of the 1,000th dwelling on site.

Local Centre

34) No more than 800 residential units shall be occupied until the local centre hereby permitted has been provided in accordance with details that have previously been submitted to and approved in writing by the local planning authority and is available for occupation. The details to be submitted shall provide for a mix of uses, including community facilities, retail and business units, as well as residential flats.

35) Prior to the occupation of any community, retail or business unit within the local centre, an operational statement shall be submitted to and approved in writing by the local planning authority for that unit detailing the method of operation including, but not limited to, the use, hours of operation, servicing strategy and, where necessary, any management procedures for the unit to reduce the potential impact of the use on residential amenity. All units shall be operated in accordance with the approved details.

Historical Interpretation/Archaeology

36) No building shall be occupied or brought into use until a scheme of historical interpretation has been submitted to and approved in writing by, the local planning authority. Examples of how to relay and interpret the archaeology and history of the site can include, but are not limited to, the use of materials, landscaping, public art and the provision of historical interpretation boards. The details to be submitted shall include location, design, dimensions and materials of any fixed interpretation. The historical interpretation scheme shall be carried out in full accordance with the approved details prior to first occupation of any residential accommodation and shall thereafter be retained and maintained in accordance with the approved details.

37) No building shall be occupied or brought into use until the site investigation and post-excavation assessment approved pursuant to condition 23 has

been completed in accordance with the approved details and the provision made for analysis, publication and dissemination of the results and archive deposition has been secured.

Surface Water Drainage - verification

38) Prior to first occupation (or within an agreed implementation schedule) a signed verification report carried out by a qualified drainage engineer (or equivalent) must be submitted to and approved in writing by the local planning authority to confirm that the surface water drainage system the subject of condition 26 has been constructed in accordance with the approved details. The report shall include details and locations of critical drainage infrastructure (such as inlets, outlets and control structures) including as built drawings, and an operation and maintenance manual for the unadopted parts of the scheme as constructed.

Access/Highways/Travel Plan/Electric Vehicle Charging

39) No dwelling within any phase shall be occupied until details of provision, surfacing and drainage of the access road to that dwelling have been submitted to and approved in writing by the local planning authority. The details to be submitted shall also include a timetable for complete delivery of the access road. Development shall be carried out in accordance with the approved details and timetable.

40) No dwelling shall be occupied until the vehicular accesses approved pursuant to condition 5 have been provided with the necessary visibility splays, and no obstruction of sight, including any boundary treatment more than 0.6m above carriageway level shall be permitted within the visibility splays thereafter.

41) No dwelling in any phase shall be occupied unless and until a Travel Plan for that phase, pursuant to the sustainable development aims and objectives of the National Planning Policy Framework and in general accordance with the DTA Framework Travel Plan (SJT/JA/20230-04b 13 September 2019) has been submitted to and approved in writing by the local planning authority. The Travel Plan shall include: arrangements for the appointment of a Travel Plan coordinator for a period to be agreed, objectives, targets, mechanisms and measures to achieve the targets (including the monitoring of air quality) and timescales for implementation, together with monitoring and review provisions and an enforcement mechanism for failure to meet the Travel Plan targets. The Travel Plan shall be implemented as approved.

42) No dwelling shall be occupied unless and until an electric vehicle (EV) charging point for that dwelling (one per dwelling with dedicated parking and one per 10 unallocated parking spaces) has been installed and is operational in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. Once provided, the EV charging points shall be retained thereafter.

43) The care home, extra care home, school/nursery, and the commercial/ community units within the local centre hereby permitted, shall not be occupied unless and until related electric vehicle (EV) charging points (both active and passive) have been installed and are operational in accordance with details that shall previously have been submitted to and approved in

writing by the local planning authority. Once installed, the EV charging points shall thereafter be retained.

POST-OCCUPANCY CONDITIONS

Permitted Development Rights

44) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2017 (as amended) (or any order amending, revoking and re-enacting that order with or without modification) none of the community, retail and/or business units within the local centre hereby permitted shall be converted to residential use, or any other use.

Unexpected Contamination

45) In the event that contamination that was not previously identified is found at any time when carrying out the approved development, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 17 and, where remediation is necessary, a remediation scheme must be prepared in accordance with the requirements of condition 18, which is subject to the approval in writing of the Local Planning Authority.

Lighting

46) No external lighting within any phase of the development hereby permitted (other than within residential curtilages relating to domestic properties) shall be installed other than in accordance with details that have previously been submitted to and approved in writing by the local planning authority. Any lighting will need to avoid light spillage onto wildlife corridors and prevent light spill above the horizontal.

----------END OF SCHEDULE----------

ANNEX E
Information to assist the Secretary of State's Habitats Regulations Assessment if required[770]

1. PREAMBLE

1.1 One of the Council's reasons for refusal related to the effects of the development proposed on the Medway Estuary and Marshes Special Protection Area/Ramsar Site. However, supplementary information was subsequently provided by the appellant on this, in consultation with Natural England. As set out at paragraph 5.1(1) of the General Matters Statement of Common Ground,[771] on the basis of an executed section 106 agreement to secure the mitigation required by Natural England, the Council did not pursue this reason for refusal at the Inquiry. Since there was no dispute between the main parties on this matter, ecological impact is not identified as a main consideration in the Report.

1.2 The appeal site does not overlap with but lies in close proximity to a number of European designated sites. The Conservation of Habitats and Species Regulations 2017 (as amended) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended) (for plans and projects beyond UK territorial waters (12 nautical miles)) require that where a plan or project is likely to have a significant effect on a European site,[772] or European marine site, either alone or in combination with other plans or projects, and where the plan or project is not directly connected with or necessary to the management of the European site, a competent authority (the Secretary of State in this instance) is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of the European site, in view of the site's conservation objectives.

1.3 The *People over Wind* judgement[773] ruled that measures intended to avoid or reduce the harmful effects of a plan or project (ie mitigation) should not be taken into account when determining if significant effects are likely. They can only be considered at the Appropriate Assessment stage.

2. PROJECT LOCATION

2.1 The appeal site and its surroundings are described at section 2 of the main Report. The site is located to the east of Gillingham and Chatham, north-west

[770] The information reported in this Annex is derived largely from the following documents: Information for Habitats Regulations Assessment (CD5.13) as supplemented by the Surface Water Drainage Strategy Addendum (CD6.8) the IHRA Addendum (CD6.9) the proof and Appendices of Mr Goodwin (which are found at Appendix 5 to Mr Parr's proof (CD10.1 part 1 of 3)) and ID 25
[771] CD11.1
[772] Regulation 8 of the Habitats Regulations 2017, as amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (the 2019 Regulations) defines European sites and European marine sites. European sites include: Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) already existing at 31 December 2020; any Site of Community Interest (SCI) placed on the EU Commission's list or any site proposed to the EU prior to 31 December 2020; and any SAC or SPA designated in the UK after 31 December 2020. European marine sites are defined as European sites consisting of marine areas. As a matter of policy, the Government also applies the Habitats Regulations procedures to Ramsar sites. European sites in the UK will no longer form part of the EU's 'Natura 2000' ecological network. The 2019 Regulations have however created a 'national site network'. The national site network includes existing SACs and SPAs, and new SACs and SPAs designated under the Habitats Regulations 2017 (as amended), as noted above. Ramsar sites do not form part of the national site network, but all Ramsar sites are treated in the same way as SACs/SPA as a matter of policy.
[773] *People Over Wind and Peter Sweetman v Coillte Teoranta* [2018] EUCJ C-323/17

of Rainham, immediately south of Lower Rainham Road (B2004) between the built up area to the south, and the Riverside Country Park and River Medway Estuary to the north.

2.2 To the north-west, the appeal site is bounded by agricultural fields between the site and Lower Twydall/Lower Twydall Lane. To the north and north-east, it is bounded partly by the buildings that comprise the settlement of Lower Rainham and by the B2004 Lower Rainham Road, beyond which are further agricultural fields and paddocks alongside the Medway River Estuary. To the south-east, the site is adjoined by allotments and Lower Bloors Lane, beyond which is the Bloors Lane Community Woodland. The south-western boundary is defined by the Gillingham to Sittingbourne railway line, which is elevated above the landscape of the appeal site on a slight embankment. On the other side of the railway line is the urban area of Twydall/Rainham.

2.3 Details of the development proposed are set out at section 3 of the main Report. In essence, it is proposed to develop some 51.5 hectares of commercial apple orchard for up to 1,250 residential units, a local centre, a village green, a two form entry primary school, a 60 bed extra care facility, an 80 bed care home and associated accesses.

3. THE DESIGNATED SITES, THEIR QUALIFYING FEATURES AND CONSERVATION OBJECTIVES

3.1 There are a number of number of international/European designated sites located within 10 kilometres (km) of the appeal site as the crow flies:

- Medway Estuary and Marshes Special Protection Area (SPA)/Ramsar Site
- Thames Estuary and Marshes SPA/Ramsar Site
- The Swale SPA/Ramsar Site
- Queendown Warren Special Area of Conservation (SAC)
- North Downs Woodlands SAC
- Peter's Pit SAC

3.2 No arguments were advanced that any additional European sites should have been considered. The relationship between the appeal site and each of these designated sites is shown on Plan ECO1 of the document titled *Information for Habitat Regulations Assessment* (May 2019) which accompanied the planning application.[774]

Medway Estuary and Marshes SPA/Ramsar Site

3.3 This is the nearest of the designated sites, lying approximately 0.2 kilometres (km) to the north of the appeal site boundary at its closest point. Both designations share a common boundary. The SPA is also part of the Swale and Medway European Marine Site. It is underpinned by the Medway Estuary and Marshes Site of Special Scientific Interest (SSSI).

3.4 The qualifying features of the SPA are populations of breeding, wintering and migratory birds of European importance including Avocet, Little Tern, Common Tern, Bewick's Swan, Pintail, Shoveler, Teal, Wigeon, Turnstone, Dark-bellied Brent Goose, Dunlin, Knot, Ringed Plover, Oystercatcher, Black-tailed Godwit,

[774] CD5.13

Curlew, Grey Plover, Shelduck, Greenshank and Redshank, and the support it affords to some 20,000 waterfowl.

3.5 With regard to the SPA, the stated conservation objectives seek to ensure that

the integrity of the site is maintained or restored as appropriate, and to ensure that the site contributes to achieving the aims of the Wild Birds Directive.

3.6 The qualifying features of the Ramsar site include nationally scarce plants and invertebrate species listed on the British Red Data Book. It also supports a waterfowl assemblage of international importance and populations of Grey Plover, Redshank, Dark-bellied Brent Goose, Shelduck, Pintail, Ringed Plover, Knot and Dunlin at levels of international importance.

3.7 The SPA/Ramsar site and SSSI are separated from the application site by the Lower Rainham Road (B2004) agricultural fields and existing residential development in Lower Rainham. Access into the majority of the SPA/Ramsar site and SSSI is generally restricted due to the estuarine nature of the site (with habitats subject to inundation with the tide). In some locations however, the designated site boundary incorporates land beyond the sea wall, including a number of public rights of way.

3.8 Riverside Country Park, which lies between the appeal site and the Medway Estuary, is an extensive site (around 100 hectares) some parts of which, including the Horrid Hill peninsula and much of the Motney Hill peninsula, lie within the boundary of the SPA/Ramsar site. One of the Country Park car parks is located approximately 0.5 km to the northwest of the appeal site at its closest point (straight line distance).

Thames Estuary and Marshes SPA/Ramsar site

3.9 These designated sites lies approximately 8.4 km to the north of the application site at its closest point, some 19 km by road. Both designations share a common boundary. The SPA is a part of the Thames Estuary and Marshes European Marine Site. The component SSSI of relevance to the appeal site, which underpins this designated site, is the South Thames Estuary and Marshes SSSI.

3.10 The qualifying features of the SPA are the support it affords to populations of wintering and migratory birds of European importance, namely Hen Harrier, Avocet, Dunlin, Knot, Black-tailed Godwit, Grey Plover, Redshank and Ringed Plover. It also supports at least 20,000 waterfowl, including Avocet, Grey Plover, Knot, Dunlin, Black-tailed Godwit and Redshank.

3.11 With regard to the SPA, the stated conservation objectives are to ensure that the integrity of the site is maintained or restored as appropriate, and to ensure that the site contributes to achieving the aims of the Wild Birds Directive.

3.12 The qualifying features of the Ramsar site are the support it provides to at least one endangered plant species, at least 14 nationally scarce plants of wetland habitats and more than 20 British Red Book invertebrates. It also supports a waterfowl assemblage of international importance and populations of Ringed Plover, Black-tailed Godwit, Grey Plover, Knot, Dunlin and Redshank at levels of international importance

3.13 The SPA/Ramsar site is separated from the application site by the River Medway and open countryside on the Hoo Peninsula, which form a significant barrier. As a result, the distance between the appeal site and the nearest part of the designated site by road is approximately 19 km.

3.14 As with Medway Estuary and Marshes, access into the SPA/Ramsar site is restricted due to the estuarine nature of the site, but the area is crossed by a limited number of public rights of way.

The Swale SPA/Ramsar Site

3.15 This is situated approximately 8.9 km to the east of the appeal site boundary at its closest point, some 14.5 km by road. Both designations share a common boundary and are underpinned by The Swale SSSI.

3.16 The SPA is a part of the Swale and Medway European Marine Site. The qualifying features of the SPA are the populations of migratory European bird and waterfowl species that it supports, including Dark-bellied Brent Goose, Dunlin and Redshank.

3.17 The stated conservation objectives for the SPA are to ensure that the integrity of the site is maintained or restored as appropriate, and to ensure that the site contributes to achieving the aims of the Wild Birds Directive.

3.18 The qualifying features of the Ramsar site include nationally rare and scarce plants and at least seven British Red Date Book invertebrates. It also supports a waterfowl assemblage of international importance and populations of Redshank, Dark-bellied Brent Goose and Grey Plover at levels of international importance.

3.19 The SPA/Ramsar site is separated from the appeal site by existing development at Upchurch, Lower Halstow and Iwade, together with extensive areas of open countryside. The distance from the appeal site to the designated site by road is approximately 14.5 km. As with the designated sites above, access into the Swale SPA/Ramsar site is restricted due to the estuarine nature of the habitats.

Queendown Warren SAC

3.20 This is the nearest SAC to the appeal site, situated approximately 4.2 km to the south-east of the site boundary at its closest point (straight line distance) some 7.4 km by road. It is underpinned by Queendown Warren SSSI.

3.21 The qualifying feature of the SAC is its Annex I priority habitat:

- *Semi-natural dry grasslands and scrubland facies: on calcareous substrates (Festuco-Brometalia) (important orchid sites). (Dry grasslands and scrublands on chalk or limestone, including important orchid sites).*

3.22 The stated conservation objectives for the SAC are to ensure that the integrity of the site is maintained or restored as appropriate, and to ensure that the site contributes to achieving the favourable conservation status of its qualifying features.

3.23 The SAC is separated from the appeal site by existing development at Gillingham and Chatham, the M2 motorway and open fields. It is located over

300 metres to the south of the M2 motorway at its closest point, with only minor rural lanes situated within 200 metres of the site.

3.24 There are a number of existing footpaths and tracks at Queendown Warren SAC, with a small car park located to the north-east of the SAC boundary.

North Downs Woodlands SAC

3.25 The SAC is situated approximately 7.9 km to the southwest of the appeal site boundary at its closest point (straight line distance). The component SSSI of relevance to the appeal site, which underpins this European designated site, is the Wouldham to Detling Escarpment SSSI.

3.26 The qualifying features of the SAC include three Annex 1 priority habitats:

- *Taxus baccata woods of the British Isles. (Yew-dominated woodland);*
- *Asperulo-Fagetum beech forests. (Beech forests on neutral to rich soils);*
- *Seminatural dry grasslands and scrubland facies: on calcareous substrates (Festuco-Brometalia). (Dry grasslands and scrublands on chalk and limestone).*

3.27 The stated conservation objectives are to ensure that the integrity of the site is maintained or restored as appropriate, and to ensure that the site contributes to achieving the favourable conservation status of its qualifying features.

3.28 The SAC is separated from the appeal site by existing development in Gillingham and Chatham, the M2 motorway and open fields. However, it lies in close proximity to the strategic road network in two locations: the A229 at Kit's Coty to the west and A249 at Detling to the east. The distance by road from the appeal site to those two locations is approximately 15.1 km and 16.4 km respectively.

3.29 There are a number of public rights of way passing through the woodland, although the nearest component of the SAC to the appeal site is located on a very steep embankment, which is likely to restrict informal recreation to existing footpaths and routes.

Peter's Pit SAC

3.30 Peter's Pit SAC is located approximately 9.3 km to the south-west of the appeal site boundary at its closest point (straight line distance) some 16.4 km by road, and is underpinned by Peter's Pit SSSI.

3.31 The qualifying features of the SAC are the large populations of Great Crested Newt that it supports. The stated conservation objectives are to ensure that the integrity of the site is maintained or restored as appropriate, and to ensure that the site contributes to achieving the favourable conservation status of its qualifying features.

3.32 The SAC is significantly separated from the appeal site by existing development in Gillingham and Chatham, the M4 motorway and woodland. Public access through the designated site is restricted, in part due to the nature of the site as a former chalk quarry.

4. HRA IMPLICATIONS OF THE PROJECT AND ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS

4.1 The Medway Estuary and Marshes, Thames Estuary and Marshes and The Swale SPAs/Ramsar sites are designated on account of wetland birds and wildfowl which are predominantly associated with estuarine habitats. Whilst the qualifying bird species may utilise sites further inland for foraging, the extent to which land provides such opportunities for these species depends on a number of factors, not least the current use of the land and management regime.

4.2 With the exception of a small number of existing buildings, the appeal site comprises a commercial apple orchard. Grassland areas associated with the orchard are intensively managed, being regularly mown, with herbicide treatment applied to the edges. Tall hedgerows with trees are present along the boundaries of the site, and also subdivide the site in places. Together with the orchard trees themselves, that planting limits sight lines for birds on the ground. Consequently, the habitats present within the appeal site do not provide ready foraging opportunities for the qualifying species associated with any of the identified SPAs/Ramsar sites. Indeed, the breeding bird survey undertaken at the appeal site between April and June 2018 recorded none of the qualifying species associated with the SPAs/Ramsar sites.[775] There is no likelihood therefore that the appeal site represents land which could be classed as important 'supporting habitat' for any of the SPA/Ramsar sites considered here.

4.3 With the exception of the Medway Estuary and Marshes SPA/Ramsar site, the appeal site is separated by a significant distance from the other designated sites by existing development in Gillingham and Chatham, open countryside and/or significant barriers such as the River Medway. There is no likelihood therefore, of direct impacts on any of those sites as a result of factors such as lighting or noise during the construction or operational phases of development.

4.4 However, given the proximity of the Medway Estuary and Marshes SPA/Ramsar site, it is necessary to consider, on a precautionary basis, potential pathways for direct effects through lighting and noise during construction and operation of the development. In addition, whilst no watercourses flow through the appeal site, there is a potential hydrological pathway in the form of the existing surface water and foul water network that the development scheme would connect with. There are no hydrological links between the application site and any of the other international/European designated sites.

4.5 As the scheme includes up to 1,250 new dwellings, there is also a potential pathway for effects to arise as a result of an increase in recreational pressure, specifically through physical damage and degradation to habitats, and disturbance to qualifying species associated with the various SPAs/Ramsar sites, in particular for the Medway Estuary and Marshes SPA/Ramsar site, given its proximity. Although located significantly further away by road, consideration has also been afforded to potential effects that could arise at the other SPA/Ramsar sites.

[775] The Ecology Partnership, July 2018 Breeding Bird Survey report: Technical Appendix 15.4 of the ES (CD5.43)

4.6 Whilst all the SACs are located a significant distance by road from the appeal site, again consideration was given on a precautionary basis to the potential for recreational effects to arise at those sites as well.

4.7 There is also a potential pathway for a significant effect through air quality impacts associated with an increase in road traffic. As such, consideration was afforded to such effects, in particular on those sites in close proximity to the strategic road network in the locality.

4.8 To summarise, potential pathways for significant effects on the international/European designated sites are limited to the following:

- Direct impacts through lighting and noise (in respect of Medway Estuary and Marshes SPA/Ramsar site only);
- Hydrological impacts (in respect of Medway Estuary and Marshes SPA/Ramsar site only);
- Physical damage and degradation to habitats arising from an increase in recreation;
- Disturbance effects (eg from dog walking/walking); and;
- Air quality impacts associated with increase in traffic emissions.

Direct impacts through lighting and noise (Medway Estuary and Marshes SPA/Ramsar site only)

Vulnerability

4.9 Direct illumination of an ecological receptor can be regarded as having a potential significant impact where illumination is at a level of 1 lux or above (other than in relation to particular species that are not relevant here).

4.10 Increased noise generated during the construction phase also has the potential to disturb the qualifying bird species. Whilst the effects would be temporary and reversible, they could cause birds to cease feeding and/or take flight, leaving the area of influence, using up valuable energy resources which can be of particular importance during cold/adverse weather in the winter period. Very loud noises (in excess of 70dB) can have impacts on birds at a distance of up to 300 metres.

4.11 In relation to operational impacts from noise, the qualifying bird species are likely to exhibit a level of habituation to noise associated with current land uses in the local area. There is no reason to suppose in this regard, that the species present would not habituate to increases in noise levels or frequency of events in the long term.

Consideration of Likely Significant Effects

4.12 The SPA/Ramsar site is separated from the appeal site by Lower Rainham Road (with some existing street lighting) a number of existing dwellings, treelines and agricultural fields. As a consequence, any increase in direct illumination of the designated site at a level at, or above 1 lux, would not occur as result of the appeal scheme and thus potential lighting impacts could not be considered to be significant when the project is considered either alone, or in combination with other plans or projects.

4.13 Surveys identified baseline ambient noise levels adjacent to Lower Rainham Road along the northern site boundary of 64dB LAeq,T during the day, and 57dB LAeq,T at night. Since the noise is largely associated with road traffic, the potential for additional noise impacts arising from the proposal, either during the construction or the operational period would not represent a 'novel' noise source. Moreover, given the distance separation, it is anticipated that noise levels would be much lower within the site than those recorded along the road itself.

4.14 In any event, should qualifying bird species utilise the nearest parts of the SPA/Ramsar site, they would invariably be habituated to the existing background noise levels. It is noted however that the vast expanse of intertidal mud within the designated site provides ample opportunities for birds within the site.

4.15 The greatest potential for adverse effects to arise is likely to occur as a result of 'short, sharp' noise events, particularly where these occur in conjunction with particular conditions which are likely to exacerbate the effect, for instance during very cold weather.

4.16 At present, the existing acoustic environment at the nearest part of the designated site is characterised by continuous, low level noise associated with road traffic along Lower Rainham Road, as well as informal recreation (see below). Given that the appeal scheme is for new residential development, including residential care and a primary school, the proposal would not lead to a significant effect at the SPA/Ramsar site during the operational period.

4.17 Construction activities are more likely to involve sudden noise events, with comparatively greater potential for instantaneous disturbance events. Studies have indicated an approximate threshold of 50dB for impulsive noise. Noting that ambient noise levels along Lower Rainham Road already exceed this threshold, short term disruptive noise events arising during construction are unlikely to result in a disturbance effect upon qualifying birds. Furthermore, the application site is visually screened from the nearest part of the designated site, a factor known to be of relevance with regards to the likelihood of disturbance arising to qualifying birds.

4.18 Given the negligible increase in noise levels arising during construction compared to the baseline situation, the potential for adverse effects to qualifying species from noise impacts during construction is negligible.

4.19 In summary therefore, the development proposals would not be likely to give rise to significant effects upon the SPA/Ramsar site as a result of lighting or noise impacts, either during the construction or operational periods, either alone or in combination with other plans or projects. That conclusion does not rely on any specific mitigation or avoidance measures beyond those which would form an integral part of the construction works or operation of the site.

Hydrological impacts (Medway Estuary and Marshes SPA/Ramsar site only)

Vulnerability

4.20 The hydrology of this designated site is for the most part associated with the tidal influences of the estuary. Estuarine habitats are susceptible to toxic

contamination, sedimentation and erosion, which have the potential to kill off benthic and other invertebrates, as well as plant species. Knock-on effects on organisms further up the food chain, such as birds, are also possible via the uptake of toxins by these groups.

Consideration of Likely Significant Effects

4.21 The distance separation, and the absence of any watercourses that flow through, or which lie adjacent to, the appeal site which are linked to the SPA/Ramsar site mean that there is no potential pathway for an adverse effect to arise to the designated site during the construction phase through hydrological impacts, such as surface run-off, contaminated water or siltation.

4.22 As outlined in the Flood Risk Assessment (FRA)[776] the surface water drainage strategy for the proposed development involves the delivery of a Sustainable Drainage System (SuDS). As illustrated on the Drainage Strategy Plan,[777] the development would utilise a series of attenuation basins and swales throughout the site, with measures in place to restrict runoff velocities during extreme events.

4.23 The Ground Assessment[778] indicates that the '*potentially highly permeable chalk aquifer is overlain by circa 2m to 6m of low permeability clays.'* As such, the development proposals include deep bore or trench soakaways within or adjacent to attenuation basins, enabling more surface water runoff to be discharged to ground, as opposed to the existing sewer network. However, given that further investigation would be required to confirm that infiltration drainage is viable, a precautionary approach has been adopted and the drainage strategy assumes a 'no-infiltration' system.

4.24 As set out in the FRA, the drainage system would be connected to an existing surface water sewer that eventually discharges into the River Medway via an existing outfall. The rate of discharge into the surface water sewer would be maintained at current, green field run-off rates. The design of the SuDS would ensure that water quality associated with development runoff would be managed through a series of measures, such as gully pots on highways, hydrocarbon interceptors and attenuation ponds before discharge to the existing surface water sewer. The final detail of the drainage strategy would be informed by further technical studies and would need to be agreed with the Lead Local Flood Authority at the detailed planning stage.

4.25 In terms of foul water drainage, the FRA sets out that the proposed development would connect to the existing public sewer network. Given its proximity to the site, it is considered likely that waste water would be treated at Motney Hill Waste Water Treatment Works. To date, Southern Water has not raised any concerns with regards to capacity at the site.

4.26 Given that the design of the development scheme incorporates appropriate measures, including the delivery of a SuDS system as an integral part of the development scheme (proposed irrespective of the international/European

[776] CD5.17……
[777]
[778]

designated site) the risk of potential adverse effects via hydrological pathways occurring as a result of the development proposals is *de minimis* in nature. On that basis, the appeal scheme would not be likely to have a significant effect on the designated site via hydrological impacts, either considered alone or in combination with other plans or projects.

Physical damage and degradation to habitats from increased recreation (all the designated sites)

Vulnerability

4.27 Recreational pressure on a wildlife site, including walking and cycling, trampling of vegetation, soil enrichment (through dog fouling), fly tipping/littering and fires, has the potential to cause the degradation of its qualifying habitat features. In all but the case of fires, these potential pathways for impacts are directly related to the frequency of visits and the management of visitors on site. In the case of fire damage, this is generally as a result of anti-social behaviour (arson) and is more prevalent in habitats in close proximity to residential areas.

4.28 Some fragile habitat types are more susceptible to damage as a result of an increase in recreational disturbance than others, as well as unrelated factors including scrub encroachment, natural erosion, grazing and hydrology.

4.29 Where existing tracks and public rights of way are clearly defined on the ground and where suitable visitor management initiatives (such as signage) and a maintenance plan are in place, adverse impacts from visitor pressure is far more limited in extent. This is because erosion impacts, often associated with walkers, runners, horses and cyclists, are concentrated along specific routes, leaving the wider area free from such effects.

Consideration of Likely Significant Effects

4.30 Based on an average of 2.4 persons per dwelling, the development proposed could give rise to approximately 3,000 additional people in the area. Around 21% of households would be expected to own dogs, and would be likely to access nearby recreational areas for dog walking. The development scheme is estimated as resulting in an increase of approximately 263 dogs.

4.31 As set out earlier, with the exception of Medway Estuary and Marshes SPA/Ramsar site, the application site is separated by a significant distance when travelling by road, from all other designated sites. The distances referred to do not take into account whether there are opportunities for car parking - residents may, in some case, need to travel even further to reach car parks where present.

4.32 Future residents of the appeal site would clearly have to travel a considerable distance by car to reach the nearest part of those sites. They would then need to access the site in order to have a potential effect upon it. On that basis, it is highly unlikely that new residents would visit the designated sites in any significant numbers, even more so on a regular basis.

4.33 In any event, the qualifying features of Medway Estuary and Marshes SPA/Ramsar site, the Swale SPA/Ramsar site and the Thames Estuary and Marshes SPA/Ramsar site essentially comprise populations and assemblages of

wildfowl and wetland birds (with the exception of wetland plants and invertebrate features associated with the Ramsar sites). Whilst recreational pressure can potentially result in degradation to the habitats which are associated with (and which support) these qualifying features, the qualifying features in and of themselves are not sensitive to physical damage and degradation.

4.34 Moreover, since the key habitats for the qualifying species at these sites are estuarine in nature they are, in the main, inaccessible for walkers and dog walkers, with the vast majority of the designated sites not accessible. The public footpaths at the Medway Estuary and Marshes SPA/Ramsar site are primarily restricted to the boundary of the designated site. Any potential effects as a result of physical damage, such as trampling or erosion, or localised nutrient enrichment, would therefore be restricted to existing footpaths.

4.35 Whilst access into the coastal SPA/Ramsar sites is possible in some locations – for instance at Horrid Hill for the Medway Estuary and Marshes SPA/Ramsar site – there are a limited number of footpaths and tracks, with few opportunities for visitors to stray from the designated routes into the marshy or mudflat habitats. Other factors relating to physical habitat damage and degradation are of far greater significance, for instance the potential for estuarine habitats to change dynamically in light of restrictions imposed from coastal defences. In light of that, the potential for an adverse effect to the coastal SPAs/Ramsar sites from physical damage or degradation to habitats arising as a result of an increase in recreational pressure, is really very limited.

4.36 In coming to a view on this, it is worth noting that no reference is made in the Supplementary Advice to the Conservation Objectives for the coastal SPAs, to potential damage to habitats associated with the qualifying features arising from recreational pressure.

4.37 Qualifying features associated with the SACs within 10km radius of the application site are potentially more susceptible to physical damage arising from increased in recreational pressure. However, both North Downs Woodland SAC and Peter's Pit SAC are located more than 15 km by road from the appeal site. Moreover, I understand that there do not appear to be specific parking opportunities associated with the nearest components of those designated sites to the appeal site. As such, the probability of new residents driving to either of those sites for informal recreation is very unlikely.

4.38 Moreover, the site-specific characteristics of both sites further limits the potential for habitat damage to occur. North Downs Woodlands SAC is located on a steep south-facing slope, which is likely to discourage access into the designated site beyond the recognised public rights of way. Similarly, whilst there is a public right of way passing through Peter's Pit SAC (which is managed by Kent Wildlife Trust), it is understood that no wider public access is permitted due to health and safety - the site represents a former quarry.

4.39 Whilst there is a car park located to the north-east of Queendown Warren SAC, and access is possible within the European designated site, given the distance that residents would need to travel from the appeal site, along country lanes, it seems very unlikely that there would be a significant increase in informal recreation at this site.

4.40 Again, no reference to potential damage arising from informal recreation is made in either the Supplementary Advice to the Conservation Objectives for any of these SACs, nor the SSSI citations or condition assessments for the components which underpin these sites.

4.41 All in all, any risk of potential adverse effects from physical damage and degradation to habitats occurring as a result of the development proposals would be *de minimis* in nature. Accordingly, the development proposals would not be likely to have a significant effect on any international/European designated sites as a consequence of physical damage or degradation to habitats, either considered alone or in combination with other plans or projects.

Disturbance effects (all sites)

Vulnerability

4.42 Recreational disturbance has the potential to displace birds either temporarily or sometimes permanently. If such disturbance is continuous, or very frequent, it could cause the habitat to become unsuitable for birds, resulting in an effect on their distribution in the immediate locality. This type of disturbance is most likely to occur near to well-used footpaths and may result from a range of recreational uses.

4.43 The level of disturbance to wetland bird species varies according to the activity undertaken. It is generally recognised that dog walking has the greatest potential to lead to disturbance of birds, especially where dogs are off the lead. However, such disturbance is still typically focussed along accessible rights of way, particularly where access into the European sites is restricted for both people and dogs.

4.44 Consideration must also be afforded to particularly sensitive periods for disturbance. During winter, birds are susceptible to adverse effects through disturbance due to food sources being more scarce and efficient use of energy being of heightened importance to survival. During the breeding season, disturbance can result in adult birds being flushed from nests, leaving eggs or young exposed to the elements and predation. Prolonged or repeated disturbance can cause the adults to abandon a nest site.

Consideration of Likely Significant Effects

4.45 The coastal SPAs/Ramsar sites are designated on account of the presence of wetland and wildfowl bird populations. With the exception of Avocet, Little Tern and Common Tern (in the Medway Estuary) these sites are designated on account of the wintering populations and assemblages that they support.

4.46 As already noted, the appeal scheme could give rise to approximately 3,000 additional people and an increase of approximately 263 dogs. Informal recreational activity associated with new residents is likely, therefore, to include both walking and dog walking.

4.47 There are a number of footpaths and public rights of way which lead to the north from Lower Rainham Road, which provide access into the Riverside Country Park and the Medway Estuary and Marshes SPA/Ramsar site. No pedestrian links are proposed leading from the appeal site towards the designated site. However, the main vehicular access point would be from Lower

Rainham Road, providing potential for new residents to access the designated site on foot. Access is possible via a number of pathways, roads and public rights of way which lead to the north from Lower Rainham Road.

4.48 Similar to the other coastal SPAs/Ramsar sites, the Medway Estuary and Marshes site supports a footpath network which tends to be focused around the edge of the shoreline and estuary habitats, which are likely to be attractive to new residents. As noted before, disturbance arising as a result of an increase in recreational pressure would be focussed along those existing routes, and as such should be viewed as a potential increase in existing pressures, as opposed to introduction of a new pathway for an effect.

4.49 With the exception of Medway Estuary and Marshes SPA, the other international/European designated sites are located a significant distance away from the appeal site, with a drive of at least 7.4 km required to reach the nearest part of any other site. As such, the likelihood of regular (ie daily) use for informal recreation is considered to be very limited. A proportion of new residents could, however, visit those designated sites on an occasional basis.

4.50 In the context of existing visitor pressure at the Thames Estuary and Marshes and the Swale SPA/Ramsar sites, and given the distances concerned, in light of the above it is considered that the application proposals are unlikely to lead to any significant increase in recreational pressure when considered alone. However, there remains a small potential for an effect to arise when the proposals are considered in combination with other plans and projects.

4.51 None of the qualifying habitats or species associated with the Queendown Warren and North Downs Woodland SACs are susceptible to disturbance effects from informal recreation. Whilst the SSSI citations list other features associated with these sites, including faunal species/groups, given their significant distance from the appeal site, it is unlikely that disturbance would arise sufficient to result in any adverse effect upon the integrity of the European designated sites.

4.52 In summary, in the absence of avoidance and mitigation measures, there remains the potential for a significant effect to arise on the integrity of Medway Estuary and Marshes SPA/Ramsar site through disturbance from informal recreation. There is also some, albeit very minor, potential for an effect to arise on the Thames Estuary and Marshes and the Swale SPA/Ramsar site when the project is considered in combination with other plans and projects. In the absence of mitigation measures, a likely significant effect cannot be discounted and an Appropriate Assessment is required.

Air quality impacts - increased traffic emissions (all sites)

Vulnerability

4.53 Qualifying habitats within a number of the designated sites are known to be particularly sensitive to changes in air quality, thereby affecting the quality and availability of habitats, and in turn their suitability to support qualifying species. I am mindful in this regard that there is significant variation in the sensitivity of habitats, with some, such as heathland and species-rich grassland identified to be very sensitive, with others comparatively less so.

4.54 Emissions from vehicular traffic arising as a result of the development scheme provides a potential pathway for air quality effects to arise on designated sites.

The primary pollutants which can, in some circumstances, give rise to adverse effects on European designated sites include oxides of nitrogen (NOx).

Consideration of Likely Significant Effects

4.55 The approach towards assessing the potential for effects to arise as a result of increased nitrogen deposition from increased road traffic emissions is outlined in an Internal Guidance Note produced by Natural England.[779]

4.56 A key factor to consider is the distance between an emission source (in this case, the road network) and the receptor (the designated site). Both Natural England and Highways England (the relevant statutory authorities in such matters) concur that 200 metres is an appropriate screening distance to use for assessment purposes. In essence, potential effects can be screened out of the assessment process where the qualifying interest features of a European designate site do not fall within 200 metres of a road affected by the plan or project.[780]

4.57 Given the scale of the development, and in line with pre-application advice from Natural England, consideration has been afforded not only to the road network in close proximity to the application site, but also the wider strategic road network (including the M2 motorway and major A roads).

4.58 Although the Medway Estuary and Marshes SPA/Ramsar site is located approximately 200m to the north of the appeal site at its closest point, sections lie within 200m of the B2004 Lower Rainham Road and the A289 (Danes Hill/Gads Hill) leading towards the west - the primary road access for the development would be onto Lower Rainham Road. Furthermore, both the Thames Estuary and Marshes SPA/Ramsar site and the Swale SPA/Ramsar site lie immediately adjacent to major roads (the A228 serving the Isle of Grain and the A249 serving the Isle of Sheppey respectively). Notwithstanding the significant distance that any new residents would need to travel to reach the nearest points, potential air quality effects in respect of these sites needs to be considered.

4.59 In addition, the nearest component of North Downs Woodland SAC lies within 200m of the strategic road network in two locations – the A229 at Kit's Coty to the west, and the A248 at Detling to the east. Again, notwithstanding the distances concerned, potential air quality effects need to be considered in relation to this site.

4.60 Queendown Warren SAC is located approximately 310m to the south of the M2 motorway at its closest point. Whilst there are a number of minor roads which lie within 200m of the SAC, they are isolated from the wider strategic road network and may best be described as rural lanes. Peter's Pit SAC is located well over 200m from any major roads (with the nearest such road, the A228, situated approximately 900m to the west). On that basis, and given the

[779] *Natural England's approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations* (June 2018).
[780] This position is outlined in paragraph 4.10 of the Internal Guidance Note and is similarly reflected in the Design Manual for Roads and Bridges (DMRB).

distances concerned, air quality effects arising from traffic emissions can be scoped out in respect of these sites.

4.61 Not all qualifying features associated with a European designated site are distributed evenly throughout each site. Accordingly, as acknowledged in the Natural England Internal Guidance note, the Conservation Objectives of the site are '*unlikely to apply equally to all parts of a site*.'

4.62 It is apparent that parts of the designated Medway Estuary and Marshes site which lie within 50 metres of the B2004 Lower Rainham Road and the A289 Danes Hill/Gads Hill, comprise either intertidal mudflats (which represents the vast majority) or coastal saltmarsh (in one location close to Gads Hill). With regards to the Thames Estuary and Marshes SPA/Ramsar site, habitats within 200m of the A228 include reedbeds and coastal/floodplain grazing marsh. Similarly, with regards to the Swale SPA/Ramsar site, habitats within 200m of the A249 include coastal/floodplain grazing marsh, semi-improved grassland, reedbeds, lowland fens, intertidal mudflats and coastal saltmarsh. Accordingly, assessment is therefore required in respect of sensitive qualifying species associated with these habitats.

4.63 In relation to the North Downs Woodlands SAC, habitats identified in the nearest parts of the strategic road network include deciduous woodland (to the west of the A249) and coniferous woodland (to the east of the A229). Assessment is therefore required in respect of qualifying habitats which fall under these broad categories.

4.64 The next step is to consider the risk from road traffic emissions associated with the proposal. Guidance from Natural England (and Highways England) considers that the process contribution can be considered either in terms of the predicted average annual daily traffic flow (AADT as a proxy for emissions) or the predicted emissions themselves (the actual process-contribution). An increase in 1000 AADT for traffic numbers or 1% of the critical load or level for emissions is considered to be significant, as any emissions below this level are widely considered to be imperceptible and, in the case of AADT, undetectable through the DRMB model. Where the screening assessment indicates that effects are screened out alone, the screening assessment is then applied in combination.

4.65 David Tucker Associates carried out a specific assessment in order to identify relevant increase in traffic movements as a result of the development proposals when considered in combination with other relevant plans or projects, notably the emerging Medway Local Plan, recent consents and wider general traffic growth. This assessment has considered both the local road network (including in particular the B2004 Lower Rainham Road and A289 Danes Hill/Gads Hill) and also key locations in the wider strategic road network associated with the three designated sites that would potentially be affected.

4.66 The results of that assessment, as outlined in the IHRA,[781] indicate that there is potential for an effect to arise on Medway Estuary and Marshes SPA/Ramsar site both alone and in combination. With regards to the Swale SPA/Ramsar site and

[781] CD5.13 Tables 2-5 on pages 52-53. Full detail and methodology is found in Chapters 5 and 6 of the Transport Assessment, Technical Appendix 10.1 of the ES (CD5.25)

North Downs Woodlands SAC, maximum increases of +21 AADT and +545 AADT resulting from the appeal scheme in isolation are predicted, which can be considered as a de minimis increase given the baseline AADT figures, and any effects arising would not be measurable against the baseline AADT. However, when considered in combination with the Medway Local Plan etc, the AADT screening threshold of 1,000 is clearly breached.

4.67 Further detailed consideration is therefore required to ascertain whether an adverse effect on the integrity of the international/European designated sites would arise as a result of the development proposals.

4.68 As outlined in detail in the Air Quality Chapter of the ES,[782] atmospheric dispersion modelling was undertaken by Peter Brett Associates at a number of key locations associated with each of the potentially affected designated sites. The results of the assessment work are presented in Chapter 12 of the ES,[783] as updated.[784]

4.69 Three scenarios were assessed: baseline flows as per 2017; future assessment of 2022 including traffic growth, committed development and measures in the Medway Local Plan, and the 2022 future assessment which additionally includes the proposed development. As such, the assessment considers effects in combination. Given that the anticipated completion date at that time for the proposed development is 2029, to ensure that a worst-case scenario has been modelled, the air quality assessment work was undertaken using 2029 traffic data.

4.70 The detailed results of the dispersion modelling are presented in Technical Appendix 12.7 of the ES[785] and are discussed in detail in paragraphs 12.162 to 12.181 inclusive of the ES Chapter.[786]

4.71 In short, the modelling demonstrates that the appeal scheme is not likely to have to a significant effect on the integrity of any international/European designated sites situated in close proximity to the strategic road network when considered either alone or in combination with other plans or projects. Further consideration in the form of Appropriate Assessment is, however, required in respect of NOx at the Medway Estuary and Marshes SPA/Ramsar site.

5. FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY

5.1 As outlined above, I conclude that the appeal scheme would not be likely to have a significant effect on any of the identified European/international designated sites through lighting, noise, hydrological impacts or physical damage and degradation to habitats when considered alone or in combination with other plans or projects. No specific avoidance or mitigation measures are therefore required in these regards.

5.2 However, in the absence of avoidance or mitigation measures, there remains potential for the development proposals to lead to a significant effect on the Medway Estuary and Marshes SPA/Ramsar site via disturbance effects and, on a

[782] CD5.28
[783] CD5.28-5.34
[784] See the Note entitled *Air Quality – Update and Response to EHO concerns* (Mr Parr PoE Appendix 8)
[785] CD5.34
[786] CD5.18

precautionary basis, to contribute towards such an effect at other of the coastal international/European designated sites. In addition, further detailed assessment is required in respect of NOx associated with road traffic emissions in relation to this site. An Appropriate Assessment is therefore required.

5.3 Dealing firstly with air quality, in respect of NOx, the detailed dispersion modelling identified that an increase in over 1% of the critical level is anticipated to arise at two locations at Medway Estuary and Marshes SPA/Ramsar site as a result of the development proposed.

5.4 Section 5 of the Natural England's Internal Guidance Note recommends that at Appropriate Assessment stage, *'the same 1% threshold is not used as a means of determining whether there is an adverse effect on site integrity from a road traffic project. Other factors are relevant which may mean that a plan or project that exceeds the 1% screening threshold can still demonstrate no adverse effect on site integrity through an Appropriate Assessment.'* As such, whilst the appeal scheme breaches the threshold, that simply serves to indicate that further consideration is required. It does not in and of itself indicate that the proposals would result in an adverse effect on the integrity of the designated site.

5.5 I am advised, in this regard that effects from airborne NOx are most likely on habitat/species which are permanently exposed to the air. Habitats which are underwater or, if exposed for periods of time are regularly flushed by water/ subject to tidal influences, are likely to be affected more by water based nutrient loadings arising from other sources. The only features which are likely to be exposed to emissions at the potentially affected locations are intertidal habitats which are covered by the tide with different regularities depending on the tidal reach (mudflats and saltmarsh). Since the majority of the habitats located within 200 metres of Lower Rainham Road and Gads Hill/Danes Hill, comprise mudflats, they would be covered either daily by most tides, or regularly each month on spring tides. On that basis, the predicted increase in NOx arising from the proposed development is unlikely to pose a credible risk to habitats within the designated site, and there is unlikely to be an adverse effect on the integrity of the site arising as a result.

5.6 As an SPA, and being mindful of the site's Conservation Objectives, the attribute having the most potential to be undermined in this case would be '*the structure and function of the habitats of the qualifying species'*. For the reasons outlined above, I consider that the predicted increase in NOx levels would not pose a risk to habitats associated with the designated site to the extent that they could lead to any change to the structure and function of those habitats supporting qualifying bird species that could adversely affect the integrity of the SPA.

5.7 Moreover, having regard to each of the associated qualifying features, the Supplementary Advice to the Conservation Objectives states that '*there is evidence from survey or monitoring that shows the feature to be in good condition and/or currently un-impacted by anthropogenic activities*.' I am mindful, in this regard, that at these specific locations, the critical level for NOx is already exceeded. No evidence is before me to indicate that air quality effects are currently resulting in adverse effects to the integrity of the site, despite that current situation. Importantly, the air quality assessment shows

that under both the 'development' and 'no development' scenarios, NOx levels are predicted to decrease below existing levels, in line with the ongoing trend towards improving air quality. On that basis, notwithstanding that NOx is not considered to be a credible risk to the European designated site, the development scheme would not impede this downward 'real world' trend of declining emissions between the baseline year and occupation of the development.

5.8 Nevertheless, in accordance with Air Quality Planning Guidance from Medway Council and with the precautionary principle in mind, a package of mitigation measures is proposed, including provision of travel plans, electric charging points, cycle paths, green infrastructure, in particular trees, and an extended bus route, all of which can be secured by conditions/planning obligations were the appeal to succeed. Whilst the measures are not necessary as specific mitigation for effects arising on the European designated site, they will further reduce the potential for any air quality effects, both to ecological and human receptors.

5.9 In light of the forgoing, it is my view that the appeal scheme would have no adverse effect on the integrity of Medway Estuary and Marshes SPA/Ramsar site as a result of air quality impacts.

5.10 Moving on to the identified potential recreational disturbance effects to qualifying bird species arising from an increase in informal recreation, a package of avoidance and mitigation measures is proposed. It comprises three key elements:

- provision of an appropriate financial contribution towards management and monitoring at the SPA/Ramsar sites, in accordance with the Council's Interim Policy Statement on Strategic Access Management and Monitoring;[787]
- provision of enhancements to on-site public open space to maximise opportunities for informal recreation including dog walking; and,
- engagement with Medway Council to provide further contributions towards off-site recreational opportunities in the local area.

Taking each in turn:

5.11 Along with other local planning authorities in close proximity to the North Kent Coast European sites, Medway Council has adopted a strategic level mitigation/ avoidance tool in relation to new residential development, which necessarily takes full account of potential in combination effects on the European designated site.[788] In essence, a specified index-linked, per dwelling contribution is required to contribute to the delivery of a strategic access mitigation scheme to address potential damage from population increases on the designated habitats of the Thames, Medway and Swale Estuaries and Marshes. To that end, the planning obligation[789] secures the requested financial contribution.

[787] CD3.2
[788] ibid
[789] .....

5.12 Given the nature of the coast, the provision of alternative informal open space also has a role to play in terms of mitigation for potential effects arising from informal recreation, since it is not possible to replicate the same experience (unlike provision of open space for European designated sites supporting heathland habitats, for instance). Nevertheless, the provision of attractive open space does have a role to play in mitigating for a potential increase in activity from new residents.

5.13 The appeal scheme provides for on-site opportunities for informal recreation as illustrated on the Green and Blue Infrastructure Parameter Plan[790] and the Indicative Recreation Plan.[791] The proposals would not (and indeed could not) deliver an experience directly equivalent to that found at the coast, and some future residents might still visit the SPA/Ramsar site on occasion. That said, it can be expected that the open space provision would reduce the overall number of potential visits to the SPA/Ramsar site (and SSSI) to some extent, by offering an easily accessible area for regular dog walks for new residents, and that the delivery of additional mitigation measures (as outlined above and below) could help address the potential for any additional effect. The open space provision would also provide a new facility for existing local residents, potentially reducing further the number of visits to the SPA/Ramsar site.

5.14 Furthermore, in order to avoid providing a direct link which new residents could use to easily access the European designated site on foot, no enhanced pedestrian linkage between the application site and the Country Park towards the north is proposed. In addition, no general parking areas are proposed within the site, aside from those within the care and village centre, both of which would be subject to parking and management controls, and so the development would not provide parking for individuals to park and then access the Country Park and European designated sites beyond.

5.15 In relation to the third of the key elements, Natural England required a bespoke wardening package for the Country Park, including a bespoke warden in place for a ten-year period, plus an uplift of the standard SAMM contribution to address the ongoing impacts of the development beyond the ten-year bespoke warden period, all of which is secured via the planning obligation.

5.16 The appellant has been in close consultation with Natural England throughout.[792] Natural England has confirmed that it is content that the combination of measures secured would be sufficient to ensure that the scheme, alone or in combination, would not contribute to an overall significant effect that may have an adverse effect on the integrity of any of the European/international designated sites.

6. HRA CONCUSIONS

6.1 These conclusions represent my summary and assessment of the evidence presented to me. I have taken into account all the available evidence and have adopted the precautionary principle in carrying out my consideration of the matters raised.

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792 Written Statement of Mr Goodwin paragraphs 5.2- 5.4 - found at Appendix 5 of Mr Parr's proof of evidence (CD10.1 part 1 of 3)

6.2 Having considered all of the potential significant effects that could arise from the appeal scheme, I am content, in light of the avoidance and mitigation measures which form an integral part of the development and/or which can be secured by conditions and/or the planning obligation, that the development proposed would not result in a likely significant effect alone, or in combination with other plans and projects, on:

- Medway Estuary and Marshes SPA/Ramsar Site;
- Thames Estuary and Marshes SPA/Ramsar Site;
- The Swale SPA/Ramsar Site;
- Queendown Warren SAC;
- North Downs Woodlands SAC; and,
- Peter's Pit SAC

6.3 My conclusion is predicated on the circumstances of this particular case, based on the site's unique context and situation and on the basis of securing the identified mitigation measures that I have identified.

6.4 For the purpose of clarity, the above does not constitute an Appropriate Assessment for the purposes of the Habitats Regulations. That is a matter for the Secretary of State to undertake as the competent authority.

Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand,London,WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act
With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act
Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.